2 vols
C952 f 2

415.9 .C98 F9 v.2

uess, Claude Moore, 1885-
1963.

ne life of Caleb Cushing

DOMINICAN COLLEGE
LIBRARY
SAN RAFAEL, CALIF.

Caleb Cushing about 1875

THE LIFE OF
CALEB CUSHING

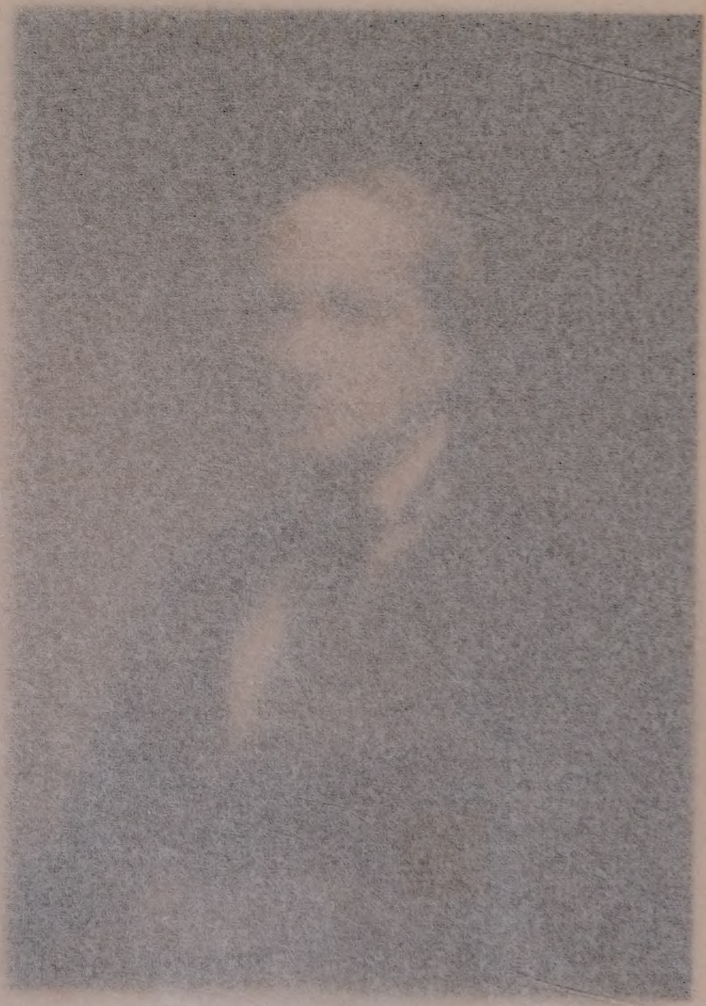
1800-1879

By
CLAUDE Moore FUESS, 1885-

VOLUME II

DOMINICAN COLLEGE
LIBRARY
SAN RAFAEL, CALIF.

NEW YORK
HARCOURT, BRACE AND COMPANY



THE LIFE OF
CALEB CUSHING

1800-1879

By
CLAUDE Moore FUESS, 1885-

VOLUME II

DOMINICAN COLLEGE
LIBRARY
SAN RAFAEL, CALIF.

NEW YORK
HARCOURT, BRACE AND COMPANY

C952 f 2

COPYRIGHT, 1923, BY
HARCOURT, BRACE AND COMPANY, INC.

PRINTED IN THE U.S.A.

21157

CONTENTS

VOLUME II

CHAPTER		PAGE
XI.	The Statesman in Arms	3
XII.	The Judge and President-Maker	82
XIII.	The Attorney General	132
XIV.	The Prelude to Civil War	206
XV.	Civil War	280
XVI.	An Adventure in Diplomacy, — The Geneva Arbitration	306
XVII.	The Closing Years, — the Ministry to Spain	358
XVIII.	Personal Characteristics	396
	Index	425

LIST OF ILLUSTRATIONS

VOLUME II

	PAGE
Caleb Cushing about 1875	*Frontispiece*
Rufus Choate	37
Daniel Webster	83
Charles Sumner	102
Franklin Pierce	123
William L. Marcy	161
Jefferson Davis	161
Caleb Cushing as American Counsel at Geneva in 1872	306
Caleb Cushing's Home	391

THE LIFE OF CALEB CUSHING

VOLUME II

CHAPTER ELEVEN

THE STATESMAN IN ARMS

"Who, if he be called upon to face
Some awful moment to which Heaven has joined
Great issues, good or bad for human kind,
Is happy as a lover."

WORDSWORTH, *Character of the Happy Warrior.*

FOR seventeen months Caleb Cushing, engaged in maintaining American prestige in the Celestial Empire, had been happily remote from "the weariness, the fever, and the fret" of partisan politics. While he was gone, however, the battle at home had been fiercely waged. When he sailed for China in 1843, the Whigs were gradually recovering from their schism, and, hopeful of winning back Webster, were uniting under their perennial leader, Henry Clay, and growing very confident of victory in the approaching campaign of 1844; while the Democrats, distrusful of Tyler, of Van Buren, and even of themselves, were not at all sure of their aims and were getting ready for defeat. Indeed Henry Clay might have realized his life's ambition but for the sudden intrusion of an issue which had fitfully darkened on the horizon for more than two decades and which was now to turn into a storm cloud, — the formidable question of Texas and its annexation to the United States. As it was, Cushing came back to find the Democracy as triumphant as in the days of Andrew Jackson, and the Whig, Henry Clay, completely discomfited. Cushing's political problems in the spring of 1845 cannot be understood without a brief survey of the events leading up to this Whig catastrophe.

Cushing's earlier sojourn in Spain and his study of her tragic history had familiarized him with the problems of her American colonies; and he had also been a keen observer of Mexico during his overland trip in 1844. Within his own lifetime, moreover, he had watched the settlement of Texas and its gradual progress towards independence. The Florida Treaty of 1819 had apparently established the boundary from the Mexican Gulf to the Pacific Ocean, using the Sabine River as a portion of the line of demarkation; but the ink on the document was barely dry before the revolt of Colonel Iturbide deprived Spain forever of her sovereignty over Mexico. Under Clay's inspiration, America had sympathized with the revolutionary Spanish colonies, and, regardless of the disapprobation of the Holy Alliance, Congress passed a bill authorizing the President to appoint envoys to the former Spanish possessions. Accordingly, on June 1, 1825, after some unavoidable delay, Joel R. Poinsett, the American minister, was formally received by President Victoria, of the new Mexican Republic.

Meanwhile Moses Austin, followed by his son, Stephen, had begun his work of developing that vague but extensive territory known as Texas. Even before Mexican independence had been declared, Stephen Austin was transporting emigrants to that almost unexplored district; and, while the government at Mexico City was trying to evolve order out of disruption, settlers were pouring over our border into Texas, — industrious, intelligent, daring men, far superior in every respect to the native Mexicans among whom they staked out their claims. By 1850, the population of Texas was at least twenty thousand, made up largely of American stock, representing every state in the Union. These pioneers,

many of them formerly planters, naturally brought with them a few slaves, and some consternation was caused in 1829, when President Guerrero abolished slavery within the limits of his republic. So many protests, however, came from Texas that Guerrero at once exempted that department from the application of his decree. It was apparent that Texas, like her neighboring states on the east, was likely to be cultivated by negro labor.

In spite of sporadic efforts to confirm the boundary line fixed by the Florida Treaty, difficulties of various sorts had arisen to prevent an agreement between the United States and Mexico. Both Adams and Jackson would have been glad to purchase Texas, but no satisfactory arrangement could be made. The racial animosity between the natives and the American settlers meanwhile intensified, culminating in 1836 with a convention of Texas citizens which, dominated by General Sam Houston, issued a formal declaration of independence. On Sunday, March 6, came the massacre of Texas volunteers at the Alamo, followed by the crushing defeat of the Mexican Army, under Santa Anna, at San Jacinto. Mexican raiders proved unable to cope in open warfare with the sturdy pioneers of Anglo-Saxon blood, and the separation which ensued was inevitable.

Caleb Cushing, at this time serving his first term in Congress, had been skeptical about acknowledging the new state. On May 23, 1836, he said:

> "The annexation of Texas to the United States . . . involves a train of evils, as the propagation among us of a spirit of military conquest, the chances of foreign jealousy and collision, and peril to the durability of the Union itself, which I cannot contemplate without solicitude and repulsive dread."

In February, 1837, he urged the legislators to take no

definite steps until the situation in the Southwest was entirely cleared up. But his colleagues were not willing to temporize. On March 1, 1837, the United States recognized the independence of Texas, which was thus ready to proceed with its plan for annexation to its powerful northern neighbor.

It is not difficult to see why Texas, small and unprotected, in constant apprehension of an invasion by Mexican guerrillas, should look appealingly towards Washington. But it was not then so simple to turn the wish into the deed. Public sentiment in New England was undeniably averse to annexation. It was felt, not only by abolitionists but also by other persons, who, though conservatives, were unwilling to have the South gain in influence, that the acquisition of Texas would further the extension of slavery, and would also, by adding to the number of slave states, assure Southern preponderance in national affairs, — particularly in the Senate, — for many years to come. Before the special session of Congress in the autumn of 1837, Caleb Cushing was besieged by the Anti-Slavery Society with memorials against the annexation of Texas, and it was recognized that, although no abolitionist, he was, to some extent at least, willing to spread propaganda on that side of the question. In a letter of July 28, 1837, to J. W. Stuart, Cushing said:

> "My present convictions on the question of the annexation of Texas to the United States, under the relations under which the question now offers itself, are adverse thereto."

On August 7, replying to an invitation from a large group of his Amesbury constituents to address a meeting remonstrating against the proposed annexation, he wrote:

"I agree with you in estimation of the great problems involved in the proposition to annex the Republic of Texas to the United States. . . . If, as will probably be the case during the winter session of Congress, the question should come before the House, I shall endeavor, in the consideration of it, to do justice to the known opinion of the people of Massachusetts, and to my own convictions, alike adverse to any augmentation of the slave territory of the United States."

In his attitude on this matter, Caleb Cushing happened to be in accord with the Van Buren administration. It is possible that Jackson, although he deemed it prudent for us to hold aloof until Texas had demonstrated her capacity to maintain her freedom, might have been led to favor annexation. But the Texan representatives were not received in Washington until after Van Buren had been inaugurated, and he had no eagerness to make Texas an issue in the next presidential election. Secretary Forsyth politely declined to enter into any negotiations, and General Memucan Hunt, the Texan Minister, was obliged to return disappointed.

This reverse was, of course, only temporary. The annexation of Texas was but one more logical and necessary step in our march across the continent. Interested politicians and zealous fanatics might dispute vociferously on the dangers involved, but "manifest destiny" was mightier than they. It was an imperative law of human nature, not a sectional conspiracy, that brought the Lone Star State into our Union. It is easy for us now to comprehend how fate was operating to make room for the pilgrims from European shores who were to land at our ports in hordes before the close of that century. Not to have received Texas under our flag would, under the circumstances, have been an injustice to its citizens, — especially since, in doing so, we violated no solemn com-

pact, enslaved no inferior race, and broke no code of law or ethics. The most recent authority, Justin H. Smith, says, after exhaustive research: "The annexation of Texas to the United States was on moral, legal, and political grounds entirely legitimate." To this conclusion Caleb Cushing himself was shortly to come. By temperament, he was no "little American," and his natural desire for the expansion of his country soon overcame his fear of Southern domination. He was to have a very positive share in the dramatic events which made possible our development in the great Southwest.

Among the merits of President John Tyler is the fact that he never wavered or shifted ground on the project of annexing Texas; indeed he assured Henry A. Wise, in 1841, that this would probably be the all-important measure of his administration. Other more urgent business compelled Tyler somewhat to alter his plans; furthermore Webster, in spite of Tyler's hints, declined to sponsor this part of the program, thus standing alone in the cabinet against acquiring Texas. But when, in 1843, Webster resigned, the President lost no time in transferring Abel P. Upshur, a man devoted to Tyler's ideas, to the Department of State. Naturally there were obstacles to surmount. Mexico, which had not yet even recognized Texan independence, could not be expected to sit by unprotesting while her former territory was put permanently beyond her grasp. Equally formidable was the opposition at home. John Quincy Adams, in a document signed by himself and several other members of Congress, asserted that there was a Southern conspiracy to annex Texas "so that the undue ascendancy of the slave-holding power of the government shall be secured and riveted beyond redemption." He announced that such annexation, as an attempt to perpetuate slavery,

was a violation of the Constitution, a breach of the national compact, and would justify a dissolution of the Union. Thus did the man who, as President, would have bought Texas in 1827 for one million dollars, reverse his views in 1843.

There was some danger, — at the time doubtless much exaggerated, — of British interference in order to bring about the abolition of slavery in Texas. Upshur's anxiety to proceed with the necessary negotiations was thus whetted by his suspicion of British intrigue. He feared, not without justification, that Lord Aberdeen would induce Guizot, the French Minister of Foreign Affairs, to act with England in persuading Mexico to acknowledge the independence of Texas, and that this step would be followed by an agreement between England and France to support Mexico in case the United States tried to annex the new Republic. Tyler himself would have gladly moved with less precipitation; but ultimately, after he had been shown some ominous despatches from abroad, he instructed Upshur to make overtures to Texas. The latter lost no time in telling the Texan Minister, Van Zandt, of the changed policy at Washington, and soon gave him formal notification that we were ready to treat for annexation whenever the proper authority could be displayed. As to the possible consequences of this act, Tyler could have been under no illusion, for the Mexican Government had already announced to the American ambassador that the annexation of Texas by the United States would be considered equivalent to a declaration of war. A short delay ensued. The Texas government, controlled by the cautious Houston, held back, fearing that the existing armistice with Mexico might be broken off; but the Texan people, almost to a man, were for annexation, and they had their will. In February, 1844,

while Cushing's vessel was weighing anchor in Macao Roads, General Henderson was named, by vote of the Texan Congress, as a "special minister" to arrange for a definite treaty.

Upshur met a premature death on February 28 through the accidental bursting of a huge pivot-gun on board the man-of-war *Princeton,* and Tyler, looking about for a secretary to press home the Texas matter, found that Wise had already approached John C. Calhoun under the false impression that he was representing the President's wishes. It turned out, however, that Calhoun, in the Department of State, was as eager as Upshur to see Texas brought under the Stars and Stripes. With exceptional speed a treaty of annexation was prepared and signed, every one apparently believing that a two-thirds vote in the Senate was assured. Then came the cataclysm. Adams and the abolitionists in the House denounced the treaty as an immoral act; Clay, on April 17, sent out his famous "Raleigh letter," in which he flatly condemned it; and Van Buren, on the same date (probably by arrangement with Clay) published a letter in the Washington *Globe,* expressing his disapproval of the negotiations. Influenced largely by these public declarations, the Senate refused to concur.

The issue thus raised was to be sharply drawn at the coming election. Clay was, of course, the Whig candidate, having already been nominated, almost by acclamation. John Tyler was nominated by a convention of his friends, and accepted, but later wisely withdrew his name. James G. Birney was the candidate of the so-called "Liberty Party." The Democrats, shrewd in their strategy, rejected the anti-Texas Van Buren and named James Knox Polk, of Tennessee, — not a conspicuous national figure but a man whose views were imperialistic.

He had said on April 23: "I have no hesitation in declaring that I am for the immediate re-annexation of Texas."

Fortune was to favor the Democrats. Clay, who, throughout his career, was always ready to shift his ground when he thought he could gain by it, committed the palpable blunder of endeavoring, after he saw the trend of public sentiment, to draw back on the Texas question, but in the well-known "Alabama letters" of July 1 and July 27, did himself more harm than good. He was promptly and justly deserted by a large number of anti-slavery Whigs. Polk, a less brilliant leader, had at least the virtue of consistency and earnestness. The Democrats, with all their weaknesses, did know what they wanted and had no reason for evasion or hypocrisy. The result was that Polk, the first "dark horse," had an electoral majority of 65 over the peerless Henry Clay. The advocates of a greater United States had won a glorious victory.

Caleb Cushing, landing in New York on the eve of New Year's Day, 1845, was meditating on the astounding news that Henry Clay had once more been balked of his aspirations. It may be surmised that Cushing was not disappointed in the result at the polls. Through Henry Clay's machinations, Cushing had been debarred from participation in the Whig councils and subjected to political ostracism; and Clay's discomfiture brought a sardonic smile to Cushing's face. On the Texas question, moreover, Cushing had gradually changed his original views. Convinced that Texas had established beyond question her right to freedom, he had learned, with complete approval, of Tyler's efforts to bring her into the Union. He could see no force in the argument of Adams that a "conspiracy" was afoot to extend slavery. What

was apparent to him was that a group of Americans, sturdy pioneers, had settled a rich frontier country, had won their independence by force of rifle and bayonet, and were now threatened constantly by an unstable and shiftless neighbor. He saw that, in the interests of civilization, and on the theory of "self-determination" so often voiced by twentieth-century statesmen, Houston and the Texans belonged with the United States. A minor motive arose from his antipathy to Great Britain, which led him to distrust the designs of that empire on Texas and to wish to block her plans for aggrandizement. Finally, his recent journey through Mexico had stimulated in him a contempt for that country which nothing could eradicate, and he was ready to applaud any policy which would remove Texas from Mexican influence.

As he stepped on the dock at New York, however, he was allied with neither Whigs nor Democrats, — or, if any preference was in his mind, he gave as yet no outward sign. He realized that, for the moment, he occupied a point of vantage from which he might turn in any direction. His old friends were warm in their welcome. Webster, on January 4, wrote him from Boston:

"I was in Marshfield, when the papers announced your arrival in N. York. I assure you few things could give me greater pleasure than to know that you are back among us again, safe & sound. You have 'put a circle round about the earth,' not quite so quick, indeed, as one of the witches said might be done, but still in a wonderfully short time, considering that you had many weighty and important things to do, as well as a globe to travel over. It is not every one, certainly, that has gone round the world without doubling either cape. You have not 'lost a day' but gained one, however the account may stand with hours, minutes, & seconds.

I returned to this city yesterday P.M. & found your letter, for which I cordially thank you. I grow impatient to see Fletcher, although I hope he will pass a month or two in France & England.

It is my purpose to leave Boston for Washington about the 16th. I propose going to Coleman's. I hope you will not be far off, as I have an infinite number of things to talk over with you."

Nor was Webster the only Whig who would have been glad to "talk over" matters with Caleb Cushing. Chastened by the election of the preceding autumn, many had lost confidence in Henry Clay. A group of these men tried to get Cushing, in February, to accept the compliment of a huge public dinner in New York City; but he declined the invitation when he learned that it was to be a Whig affair, arranged to welcome him back, as a returned prodigal, into the Whig ranks. More than one newspaper argued that the Whig proscription of Cushing should cease, pointing out that his sin, — if sin there was, — had been no less excusable than Webster's. But Cushing, as he looked about, could not be lured by any promise of forgiveness. He could not forget that he had been a Tyler man, and that Polk was in several respects Tyler's political heir. It was certain that his pride would keep him from sitting again at the council-table of Henry Clay. We must add, also, that Cushing had an unbounded admiration for the bold and firm Democratic foreign policy. Cushing knew Polk well, and had much in common with him. John N. Cushing, a strong Polk follower, was eager to have his son cast his fortunes with the Democrats. "I hope," he wrote, "you will be careful not to let Mr. Webster run away with you." By that time, however, Cushing needed no one to tell him that he could never return to the Whig Party.

Northern historians, — and until recently, most of our histories were written by Northern Republicans, — have condemned Cushing unsparingly for leaving the Whigs. It was no selfish motive which led him to abandon the

affiliations of his young manhood and change, in middle age, to another party. If he had returned to the Whigs, high honors were in prospect for him, especially in his own state. The truth is that he joined the Democrats, with no hope of any particular reward, simply on a matter of principle. When he stood by Tyler against Clay on the matter of the vetoes, Cushing was, as we read history to-day, entirely right. When he determined to follow Polk and the Democrats on the question of Texas, he was again taking a position which the future was to vindicate. As for the slavery issue, it did not affect his decision in 1845 in the slightest degree. That he modified his views on slavery as the years went on was due to his constant association with Southern Democrats and his appreciation of their point of view. But his entrance into the Democratic Party was the result of dissatisfaction with Whig policies on other problems than that of negro servitude.

As yet, however, Cushing did not publicly announce what was in his heart. He went at once to Washington to report the success of his mission, and found himself there almost a popular idol, the sensation of the hour. His embassy to the then little known Far East had about it something of the picturesque and the mysterious which appealed to the imagination. A handsome eligible widower, he was invited everywhere, to a continuous succession of dinners, teas, and balls. He dined with the President on the evening of his arrival, following this by dinners with Calhoun, Webster, Buchanan, Bancroft, Marcy, Pakenham, Van Ness, Corcoran, and others whose names are less well known to-day. He was present at the spectacular "birth-night ball," on Washington's Birthday, which both Tyler and Polk attended, and which was the season's most brilliant affair. He was at Tyler's

parting reception at the White House, when the President said "Good-bye" to his friends. He cared little for dancing, we are told, but his fascination of manner was such that there were few belles who were not willing to sit with him through a waltz or quadrille.

And so he lingered on until spring, following the advice of his father, who advised him to remain away from Newburyport until June brought warmer winds to New England. Thus it was that he watched his former associates in Congress grapple with the Texas question. As soon as the election of 1844, with its clear justification of his Texas policy, was over, Tyler, openly, almost childishly, elated, had addressed a message to Congress, saying, in part:

"The decision of the people and the states, on this great and interesting subject, has been decisively manifested. The question of annexation has been presented nakedly to their consideration. . . . A controlling majority of the people, and a large majority of the states, have declared in favor of immediate annexation. Instructions have thus come up to both branches of Congress, from their respective constituents, in terms the most emphatic. It is the will of both the people and the states that Texas shall be annexed to the Union promptly and immediately. . . . The two governments having already agreed, through their respective organs, on the terms of annexation, I would recommend their adoption by Congress in the form of a joint resolution, or act, to be perfected and made binding on the two countries when adopted, in like manner, by the government of Texas."

This suggestion is an interesting illustration of Tyler's resourcefulness and persistence. Annexation by joint resolution was an innovation, concerning the constitutionality of which a legal mind might well have had doubts; but it required only a majority vote, and could, therefore, be pushed through both branches of Congress.

It was denounced in the House by Giddings and Adams; but, when the debate was over, it passed by a margin of seventeen votes. The Senate, also, after a stormy and protracted discussion, gave the measure a good majority, but with an amendment permitting the President to use his own discretion as to whether he should invite Texas immediately upon the terms fixed by Congress or should initiate negotiations for a new treaty. Without this amendment and the implied assurance, — never, it seems definitely promised, — that Tyler, during the short period of his term remaining, would not wish to act upon it, it is possible that the resolution would not have passed the Senate. The deed, however, was done, and the House finished the work by accepting the amendment. Tyler, overjoyed, attached his signature on March 1, and Caleb Cushing was on the White House grounds that evening when one hundred guns were fired in celebration of the momentous event. Two days later, after a cabinet conference, Tyler, in what was practically the last official act of his administration, despatched a messenger to the Texan Government offering annexation. Almonte, the Mexican ambassador, protested, but to no avail, and finally, demanding his passports, set out for home.

All these important incidents Caleb Cushing watched with the close scrutiny of a trained student of diplomacy. Whatever influence he could exert was employed to further the passage of the joint resolution; and it was common gossip that Polk would utilize his talents in carrying on negotiations with Mexico. Webster, on March 24, wrote his son, Fletcher:

"The President will send somebody soon to Mexico, but whether a sole minister, or a joint mission, I do not think is yet decided. I should not be surprised if Mr. Cushing should be employed in the service. The China mission has given him

reputation, and he has one point of qualification, not found in every one, that is, a knowledge of the language. You will receive this as my conjecture only; but my opinion is, that such an appointment is very probable."

Polk, however, was a lifelong Democrat, and was cautious about placing in such a responsible position a statesman who, whatever his obvious merits, had so recently left the Whig ranks. It turned out, however, that no special mission was required for the business in hand. Through the united efforts of Great Britain and France, a treaty had already been signed between Texas and Mexico, by the terms of which Mexico was to recognize Texas if the latter abandoned its plans for entering our Union. But the Texans would have none of this treaty. The Texan Congress, when it assembled in June, had a clear choice between peace with Mexico or annexation to the United States, with a good chance of war. It quickly rejected the first alternative, and then proceeded to pass the necessary resolution acquiescing in the American proposals. A state constitution was at once prepared and adopted, and early in January, 1846, Sam Houston and Thomas J. Rusk took their seats as members from Texas on the floor of the United States Senate. In the interval the Mexican Government had been silent, and it looked as if Tyler's plan for expansion had been successfully consummated without the painful accompaniment of a resort to force.

Caleb Cushing was with a group of distinguished guests on that cold and rainy March 4, when James Knox Polk took his oath as President of the United States. There was still some question in the minds of the public as to whether he was a Whig or a Democrat; but in his heart he had determined to cast in his lot with the new administration. It is possible, but not probable, that he

expected a post in the cabinet. The only offer which reached him, however, was from Buchanan, the new Secretary of State, who wrote him on April 26:

"Judging by my last letter from Colonel King, it is not probable that Dr. Martin will consent to leave him and Paris; and after our casual but playful conversation on the subject, I follow the strong bent of my inclination in offering you the Chief Clerkship in the Department of State. I know it is not a place at all proportioned to your eminent abilities and services; and having occupied such exalted positions before your country, I dare scarcely hope that you will accept it. Yet if it were what it ought to be and what we shall endeavor to make it at the next session of Congress, — an assistant Secretaryship with a competent salary, — I should think differently. It would then be a most desirable place.

Your services in this position, in the present state of our foreign relations, might be of much advantage to your country; and it is probably a station from which you would be more likely to rise, than if you should remain in retirement. Still I am not authorized to make any promise to this effect. The President never commits himself in advance. All I can say is that I make you this offer with his entire approbation, and I shall be highly gratified if you should accept it. I have no doubt we should get along pleasantly together."

The situation thus proffered to Cushing was the one later accepted by Trist, who, as a special commissioner to Mexico, negotiated the treaty of Guadaloupe Hidalgo. Naturally it did not satisfy Cushing's ambition, and he declined it with exaggerated courtesy. It is an interesting speculation as to what might have happened had he and the cautious Buchanan been working together in the Department of State during the Mexican complications.

Cushing was not altogether pleased with his future prospects. It was pleasant to visit Richmond and flirt with the Southern belles of that capital; it was diverting to sit as a spectator while his former associates made

history; but his active mind needed something more nutritious than social festivities and political chatter. Possibly for lack of other occupation, he turned to public speaking and delivered many addresses during the summer and autumn. On July 4, he attended a celebration at William and Mary College, in Williamsburg, where he recounted some of his experiences in China. In September he spoke wittily and happily at a Horticultural Festival in Faneuil Hall. On October 13, he was in Newburyport, giving a lecture on China before the town Lyceum. Ten days later he was the first speaker on the program of the Boston Lyceum, his subject, — *The Power and Greatness of Great Britain*, — giving him an opportunity to exhort his hearers manfully to resist the encroachments of that empire. By a strange twist of fate, he was followed on that evening by Edgar Allan Poe, who, after a dull and jumbled dissertation on the principles of versification, read *The Raven* to a gradually dwindling audience. Probably two personages more sharply contrasted than Poe and Cushing could not have been brought together on the same platform; the wild, erratic genius, pale from sickness and wasted by dissipation, incapable of steadiness or stability; and the clear-headed reliable statesman, self-possessed and bold, to whom duty and responsibility were all-important. These, and other engagements of a similar nature, occupied Cushing for several months; and in the interval between them he was devoting special study to the perplexing question of the Oregon Boundary in the Far Northwest.

The title to the vast Oregon territory had been an intermittent but troublesome source of irritation to both the United States and Great Britain, and efforts to adjust the conflicting claims had proved futile. There was an existing convention, dated October 20, 1818, which provided

that the boundary west of the Rocky Mountains should remain undetermined, the country in dispute to be left "free and open" for trading purposes to inhabitants of both nations involved. Either could, however, terminate this agreement by giving twelve months notice. In Jackson's administration extensive emigration from the East to the far West began, and the potentialities of Oregon became more important. Cushing's father, who was an enterprising and shrewd trader, was one of the earliest to undertake voyages around the Horn to the Columbia River, and he predicted the wealth to be derived from the fisheries there. On December 20, 1838, he wrote Caleb Cushing:

"I am glad to see you have not forgotten the Oregon territory. The 2nd Mate of the *Ark* was in one of our whale ships; he told me that from the length of their voyage, they were getting short of salt provisions, and that on the cruise they fell in with a Sandwich Island brig, under American colors, returning from the Columbia River, where she had been on a trading voyage, and from her they procured twelve barrels of excellent quality shad and salmon. Our government have made a great mistake in not taking possession of that country years ago. I think the French will soon take possession of Mexico, and that is another reason why we should take possession of our own immediately."

There were other persons to agree with John N. Cushing, among them Caleb Cushing himself, who, early in January, 1839, as a member of the House Committee of Foreign Affairs, reported a bill providing for the protection of American citizens residing in the Oregon Territory or trading along the Columbia River or its tributaries. The House ordered that ten thousand copies of Cushing's exhaustive treatise on the subject should be printed, but nothing further was done, and Cushing's thesis, — that

Great Britain had no legitimate title to any part of Oregon, — was not really taken seriously. He did, however, receive many requests for copies, and his correspondence for the next few years is filled with letters from prospective emigrants, seeking information and counsel. Through his father, he was given regular news of the Oregon country. John N. Cushing was inclined to complain at the lack of adequate protection afforded American traders in that section. He wrote Caleb Cushing, February 5, 1841:

"Why is not the exploring squadron on the Oregon coast, where they would be valuable to their country, instead of wasting their time about the islands which may be looked after a hundred years hence in comparison with the North West coast? Philip tells me that Mr. Wyeth proposed to you some resolutions in connection with some sort of a scheme relative to the Oregon territory. The assistance for the government to give in my opinion is to send officers, military and civil, with soldiers, select a suitable place, take possession, build a fort, make a liberal grant of land to each settler, hoist the American flag, give protection and administer government. It is all the government need do. It is all I want done for me. If the government attempt to assist speculators, I think it may lead to bad results. . . . I am now building a brig expressly for the North West coast, if the result of the *Maryland* will justify."

He wrote again on December 5, 1842:

"I am so situated that I can't well stop my Columbia River operations. . . . I shall probably have my Columbia River vessel ready in about one month. . . . I find there is quite a number in town & the vicinity that have a great inclination to go to the Oregon and settle, but have not the means to get themselves there. Could the government be induced to find them a passage and provide them three or four months provision after they get there? Please let me have your opinion on the subject, and any other information you can."

In 1843, Caleb Cushing's half-brother, William, who had just graduated from Harvard, took the long voyage to Oregon, partly for his health, and partly to investigate lands in that section for his father. He had remained for many months in the vicinity of Columbia River, writing frequent letters home, and telling Caleb Cushing much that was decisive in forming his estimate of the value of the territory.

Webster, during the negotiations connected with the Ashburton Treaty, thought it injudicious to inject the delicate question of Oregon into the discussion. Tyler, in 1843, did wish to send Webster on a special mission to Great Britain to settle the Oregon boundary and adjust some other minor matters of dispute, but through partisan opposition the plan for an appropriation was, as we have seen, blocked in the House Committee of Foreign Affairs. Overtures from time to time by one country or another met with unsatisfactory responses. The Democratic platform of 1844 was a strong statement of the American position; and President Polk, who was a determined and aggressive Scotch-Irishman, came out in his inaugural with a declaration that it was our duty as a nation to establish and maintain our claim to "that portion of our territory which lies beyond the Rocky Mountains," adding significantly that "our title to the country of Oregon is clear and unquestionable."

Ringing words of this kind, which found a ready response in Caleb Cushing's heart, were not welcome in London. There was a clamor in Parliament. It looked as if England were ready and eager for war. The *Times*, — then the "Thunderer" of tradition, — deplored the "ill-regulated, overbearing, aggressive spirit of American Democracy." But, in spite of bravado and bluster, the British Cabinet had no longing for a quarrel

over Oregon. In July, 1845, Pakenham, the British Minister, proposed arbitration; but when Buchanan, in courteous reply, actually offered a settlement on the basis of the 49th parallel, Pakenham, without consulting his chief, Lord Aberdeen, rejected the suggestion, and negotiations abruptly ceased. Polk, not to be outdone in defiance, took occasion in his annual message of December, 1845, to restate his policy, and gave formal expression to his belief that the United States would be prepared, at any cost, to uphold her rights; he also asked that Congress authorize him to give the year's notice necessary, by the Treaty of 1827, to terminate the arrangement of joint occupancy. In the autumn of 1845, feeling in the United States ran high, and good Americans, — not all of them Jingos, — were shouting, "Fifty-four forty, or fight."

Cushing, although he knew as much as anyone on the subject, said very little in public until November, 1845, when he was invited by the Boston Lyceum to deliver a lecture on Oregon. He then came to Polk's support in a plea for action which, for vigor and audacity, outdid even the President. His statement of the situation is worth quotation:

"To what government does this great territory belong? Great Britain says that it belongs to nobody; that it is in the same condition as Massachusetts before the discovery of America; that it is the unappropriated part of savage lands, and that, as such, she has a right to come and take it, — she, the general conqueror, she, the universal usurper, she, the exclusive appropriator of all parts of the terraqueous globe which may seem convenient to her commerce, or desirable to her ambition.

She pretends title to no part of it; she claims the right to *invade and occupy* any part of it, at her discretion. The United States say, on the other hand: we have a good and valid title to the whole of it, as we think and believe; we are sure we have

a perfectly indisputable title to all that part which adjoins the United States, namely, from the 42nd to the 49th parallel of latitude; and if there be the shadow of any ground of claim of right, under which she can justly invade and possess any part of it (which we constantly deny), still such claim must apply to only so much of it, and no more, as, being north of the 49th parallel, adjoins her existing possessions in America.

Such is a plain and unvarnished statement of the general nature of the pretensions to this territory put forth by the British and American governments respectively. No government except the United States alleges or pretends any title to the territory; and no government, except Great Britain, sets itself up as the occupier and master by right of these (and of all the other) unappropriated parts of the earth."

After a comprehensive and searching examination of the conflicting claims, Cushing points out that Great Britain has manifested little "of the spirit either of equity or conciliation," and maintains that America, on the other hand, has "stretched conciliation and compromise to the utmost verge of honor." He does not apprehend, in spite of the seriousness of the controversy, that Great Britain will resort to ordeal by battle:

"England is too dependent on America for cotton and corn to declare war against us too lightly; and she cannot fail to remember how, in two wars with us already, at a time when we were much less powerful than now, she gained nothing but defeat and dishonor; for twice only in the history of modern times has it happened to Britain, among so many achievements of hers in every region of the habitable globe, — twice only has it happened to Great Britain to see her armies capitulate and lay down her arms upon the field of battle; and each of these times it was to the stars and stripes of the United States that the cross of St. George was lowered in humiliation and sorrow; while our ships of war, in like manner, dissolved the charm of British invulnerability on the ocean."

His conclusion minces no words in its denunciation of Great Britain and her colonial policy:

"Finally, it is not to be tolerated any longer that England should consider this *continent* the field for indulgence of her insatiable thirst of conquest and colonization. Is British intervention in the affairs of America to be dreaded? How much more, then, British occupancy? Enough for her, and more than enough for us, that she overhangs us already in the east and in the north without doing likewise in the west."

The self-confidence, bluster, exaggeration, and Anglophobia of this lecture must not be allowed to diminish our appreciation of the intense national spirit which it represents. The patriotic American of 1845 was likely to seem to foreigners rather too assertive and pugnacious, and the United States was described as the Parolles, — or braggart soldier, — among nations. But beneath this superficial boastfulness, so well portrayed by Dickens in *Martin Chuzzlewit*, there was real strength of character. The Caleb Cushings of the "40's," — and there were many of them in America, — were not always suave or tactful; nor, on the contrary, were they feeble or flabby. They feared nobody on earth, and they would have gone cheerfully to battle with all Europe on provocation. Cushing's lecture is typical of one phase in our evolution as a nation.

The Boston Lyceum address had a wide circulation, being reported in full in many American newspapers. A copy of it reached the London *Pictorial Times*, which made it the text for a vicious and unflattering study of American character and motives. Meanwhile, Cushing, in the December number of the *Democratic Review*, again shook his fist at Great Britain in an article called *English Politico-Commercial Companies*, in which he exposed what he called the "grasping ambition" of the British Government, especially as revealed in the unscrupulous methods pursued by the Hudson's Bay Com-

pany. During the winter of 1845–46 Cushing contributed many unsigned editorials on the Oregon question for the New York *Morning Telegraph* and the Boston *Herald.* When, in February, 1846, the House passed the measure authorizing the President to "give notice" to Great Britain, Cushing prepared a thoughtful article for the *Morning Telegraph,* congratulating the country on taking this decisive step. He added, in conclusion, that, while the United States did not seek war with England, she by no means feared to face such a contingency:

> "In another war with the United States, there would be found many a gallant captain in the American Navy to eclipse the fame of John Paul Jones, and, it may be, to sweep the British Channel with a broom at the mast-head, like the brave Van Tromp."

Fortunately for the great cause of Anglo-Saxon unity, the good sense of the citizens of both countries stood up under the strain. As soon as Lord Aberdeen received official confirmation of the American resolve to terminate the agreement of joint occupancy, he prepared a convention, fixing the boundary where it now lies, along the 49th parallel to the Gulf of Georgia, and thence southerly through the Strait of Juan de Fuca to the Pacific. Polk, who had then enough on his hands with the impending Mexican hostilities, sanctioned a treaty on this basis, which was accordingly signed on June 15, 1846, just as Taylor was marching on Mexican soil. Polk's firmness and directness had proved to be the best diplomacy, and we had gained in Oregon all that, in our cooler moments, we could have expected to secure. The Oregon Treaty, furthermore, was evidence that Great Britain did not contemplate interfering between the

United States and Mexico. Polk was therefore free to proceed with his aggressive policy in Mexico and California without having to reckon with possible interference with any alien power.

It is important that this fact should be clear, for the Mexican situation had reached a climax. Slidell, appointed by Polk as "Envoy Extraordinary and Minister Plenipotentiary," was refused a reception by the Mexican Government in December, — unless he chose to represent himself as simply a special commissioner to treat of the affairs of Texas. As early as July, 1845, in response to some belligerent moves on the part of Mexico, General Zachary Taylor left New Orleans and occupied Corpus Christi, at the mouth of the Nueces River. There he remained quietly for some months, Polk being apparently entirely pacific in his intentions and determined not to be the aggressor. Reports from Mexico, however, continued to be disturbing; and on January 13, 1846, the day after his receipt of Slidell's dispatch indicating that he would not be received at Mexico City, the President took the decisive step of ordering Taylor to proceed to the Rio Grande. It is interesting to note that, on January 21, before Taylor had received this order and at a time when the public at large had no suspicion of Polk's plans, an editorial written by Caleb Cushing appeared in the New York *Morning Telegraph*, insisting that a forward movement to the Rio Grande was the obvious American policy.

In thus instructing Taylor to advance to the south, Polk was probably not actuated by a wish to provoke hostilities. He was only reiterating the view maintained by American statesmen from Jefferson to Clay, — that the Rio Grande was the southern boundary line of Texas. This claim, furthermore, had been constantly asserted by

Texas itself in all its controversies with Mexico. The truth is that the attitude of Mexico made war inevitable. Garrison says, with justice:

> "After the refusal to receive Slidell, war might have been avoided still, but only by the exercise of greater forbearance than has usually characterized international relations in any part of the world at any age."

We had borne much from Mexico: she had declared that the annexation of Texas, righteous though it was, would be a *casus belli;* she had neglected to pay claims declared by a neutral arbitrator to be due us; she had declined to receive our regularly accredited ambassador. The fact is that, since Mexico would do nothing about disputed matters through the channels of diplomacy, Polk's policy was justifiable, and, for a Scotch-Irishman, he exercised real moderation and restraint.

The war was not begun by the United States. Taylor, setting out on March 8, arrived at Matamoros, where, coöperating with some American vessels, he fixed his headquarters at the mouth of the Rio Grande. On April 24, a new Mexican commander, General Arista, sent a body of troops across the river, and on the next day these Mexicans attacked and captured a scouting party of American dragoons, sixteen of whom were wounded or killed. Taylor, incensed at this act, sent a despatch to Polk announcing that "hostilities may now be considered as commenced." The news reached Washington on Saturday, May 9. Intense excitement prevailed over Sunday, and on Monday morning Polk appealed to Congress in a special message, declaring the existence of war, and urging the adoption of measures to meet the exigency. The House on the same day appropriated ten million dollars and authorized the President to call out

fifty thousand volunteers. The Senate concurred with the bill, Davis, of Massachusetts, being one of the two Senators to oppose it. The war thus brought about by a long series of unpleasant incidents, culminating in the annexation of Texas, was now a reality. As to the ultimate responsibility for the final outburst, Professor Smith has no doubt:

> "The hostilities were deliberately precipitated by the will and act of Mexico. . . . In short, Polk told only the truth when he said the conflict was forced upon us."

We may add to this evidence the fact that General Arista himself said in December, 1847, — "I had the pleasure of being the first to begin the war."

Our attitude towards Caleb Cushing and his conduct during the Mexican War will naturally be determined very largely by our views regarding the responsibility for the clash between the two nations. The New England "Conscience Whigs" were the authors of a theory, prevalent even to-day, that the war was a gigantic conspiracy on the part of Southern slave-owners to extend our slave territory, and that Polk made a deliberate attack on helpless Mexico in order to aid their plans. If this conception is correct, as Lowell and Adams believed it to be, then Caleb Cushing was wrong in supporting the war and wrong in putting on the uniform of his country. But the evidence does not accord with the theory. We have followed the course of events from before the annexation of Texas to the moment when an American soldier was killed by an enemy on American soil. The conduct of Mexico throughout these proceedings left us without any resort except that of arms. If we hold this conviction, then we must believe also that Caleb Cushing was more loyal, more patriotic, and more

far-sighted than his critics among the "Conscience Whigs."

General Taylor, on the Rio Grande, was wasting no time in considering causes or distributing blame. It was his function to make history, not to interpret it. On May 8, he defeated General Arista at Palo Alto; on the next day, he routed the enemy at Resaca de la Palma. Within a week after the President signed the war bill, Taylor had crossed the Rio Grande and had occupied Matamoros. On September 3, he added more laurels to our arms by capturing Monterey and forcing the surrender of General Ampudia:

> "The foe himself recoiled aghast,
> When, striking where he strongest lay,
> We swooped his flanking batteries past,
> And braving full their murderous blast,
> Stormed home the towers of Monterey."

Another force, under General Winfield Scott, was directed to attack Vera Cruz, and was being prepared when Congress convened in December. Everywhere we were victorious, and a large portion of Mexico was in our hands.

While these momentous events were taking place and being reported to the public, Caleb Cushing, still a private citizen, was pondering plans for his future. On the Lyceum platform he had grown to be a favorite, but he had no desire to end his days as a professional lecturer, enduring the horrors of "one-night stands" and battling perpetually with unhygienic food and drink. Early in 1846, he was on the point of sailing for Cuba, in order to investigate business opportunities in that island; but he was taken ill at the Astor House, in New York, and had to abandon the trip. He had plans drawn for a fine

new house in Newburyport, where he contemplated settling down and writing a book on China and the Chinese. Towards the end of March, however, when a crisis in Mexican affairs seemed imminent, he made his way to Washington, where he spent several weeks, waiting to see what course events would take. He was in the Capitol on May 10, when Polk's special war message was read, and he called on the President shortly after to congratulate him. By June 1 he was back in Boston, and a few days later he addressed a huge war mass meeting in Lowell.

It was at this period that he became interested in plans for opening up and developing the resources of the Northwest Territory, and early in July he started on an extended trip to that section, exploring the wild country around the Great Lakes and investigating particularly some timber lands along the St. Croix River, some miles south of St. Paul. For some weeks he lived like a trapper, getting his food by hunting and fishing and enduring hardships with the fortitude of an Indian. He wrote his sister Lydia, on October 6, from the Falls of St. Anthony:

"I have at length reached the extreme point of my proposed journey. Travelling in birch bark canoes on the lakes and rivers or on horse-back over the prairies and through the woods, is not quite so fast as by railroad; & one detention after another has made me late. But, in spite of sleeping on the ground night after night, & living as it were in the open air, or rather perhaps in consequence of this, I have enjoyed excellent health, seen much to interest & please me, & done a good deal of business. I shall commence my journey home to-morrow, descending the Mississippi to St. Louis, & then up the Ohio, & across the Alleghenies to Washington & Boston."

With unusual farsightedness, Cushing combined recrea-

tion and business, and secured the title to a considerable tract of territory, the taxes on which he paid for many years without any return, but which proved to be of great value after his death. There is reason to believe from his correspondence that he was fascinated by the glowing future which this section of our country presented, and that he seriously contemplated making his permanent home there. He had in his complex nature something of the pioneer, and the rough life of a frontiersman always appealed to him. But he arrived in Newburyport to find that his youngest and favorite half-brother, Philip, had died on September 29, of typhoid fever, and that he was, for the moment, badly needed to comfort his stricken family. Within a few weeks, moreover, he was overwhelmed with war matters which completely diverted his attention from the Northwest and its possibilities.

Cushing's old friend, Paul R. George, confidential agent and business adviser, now once more appears upon the scene. Few people ever dared to be familiar with Caleb Cushing. His dignity and a certain severity of manner effectually blocked any attempt at presumption. But George was evidently favored beyond most of Cushing's associates, and addressed him with a freedom which few others ever ventured upon. On March 7, 1846, he had written Cushing:

"I have not abandoned the Cuba matter, & want to talk with you more about it. I am all ready to engage in the St. Croix Company. Indeed I want much to see you. Cheever said he thought you were undetermined what to go about. I think it's clear what. *Not a thing.* Simply a gentlemen of leisure and fortune. What the English call vegetating a year. Nothing so well at present as to repose upon your laurels. As to amusing the mind in some way, Cuba or Lake Superior matters will do."

Caleb Cushing needed nothing to amuse his mind while a library was at hand; what he wanted was something to satisfy his restless spirit, and this George was able to bring to his attention. On July 2, just before Cushing left for Minnesota, George wrote that he had just seen Lewis Cass, who had intimated that Cushing might easily secure an appointment as general officer in the proposed volunteer army and had suggested that the latter get together some recommendations which could be submitted to the President. Here was a suggestion which fitted in exactly with Cushing's keenest ambition. Just as Roosevelt always had a longing to lead an army, so Caleb Cushing had a secret desire to be a modern Alexander or Caesar. He had an ardent and adventurous nature, ever ready to hear the call of the undiscovered. To a soul which yearned to see new sights and undergo new experiences, nothing could be more glorious than fighting his way to the "halls of the Montezumas." There was no great military campaign with which he was not familiar; he had mastered the elements of drill in the Newburyport militia; now he wanted the sensation of riding with troops into action.

As soon as he returned from his western trip, Cushing put all his energy into schemes for getting into active military duty. He was forty-six years old, but his eagerness compensated for his lack of youth. The great obstacle lay in the fact that he came from a state where enthusiasm for the war was lukewarm, if not stone-cold. In 1845, the Massachusetts Legislature had passed a resolution against the annexation of Texas; and the Whigs in the Commonwealth were determined to do all that could be done to hamper the Polk administration. As to the course of true patriotism under the circumstances existing in the autumn of 1846, there can be little

doubt. Indeed there were some Whigs who were not ashamed to put their country first, even though they were not in sympathy with the war. Among these was Daniel Webster, who announced himself ready to vote all needful supplies. Robert C. Winthrop approved of making the necessary appropriations, and, though far from supporting the policy which led to the war, was in favor of its vigorous prosecution. Abraham Lincoln, then in Washington for his only term in Congress, knew what loyalty demanded, and, though he sponsored the famous "Spot Resolutions," never withheld his vote when a question of pay or provisions for the soldiers was at stake; and he maintained that every high-minded citizen must stand by the army. The Massachusetts "Conscience Whigs," however, had no such sense of their duty. Not only did they oppose the war; they actually refused to grant money when war was a reality. What was it to them that soldiers wearing the uniform of the United States went clothed inadequately or had insufficient food or left families behind them without the means of living in comfort? To these matters they remained supremely, cruelly, indifferent.

The Secretary of War, with delicate tact, did not call upon Massachusetts for a regiment until December, 1846, and then Governor Briggs could not well decline to issue a formal request for volunteers. Here at last was Caleb Cushing's opportunity, and he was prompt to seize it. Congress had authorized the raising of a kind of "mongrel force," consisting of volunteer regiments from the various states, under officers commissioned by the state governments; when fully organized, these regiments were to be mustered into the United States service. Cushing at once set about recruiting a company for the proposed regiment, and succeeded in filling such

a unit from Newburyport and its vicinity. Edward Webster, a younger son of Daniel Webster, had meanwhile built up a company in Boston, and others were in process of formation throughout the state. It was a laborious task, for there were few public men who dared to assist; but when 1847 opened, practically the entire personnel of the "First Massachusetts Volunteers" had been enrolled.

In other respects it was a busy autumn for Caleb Cushing. In November he was chosen as Representative to the General Court from Newburyport. Although he had not planned to be a candidate, he was approached at the last minute and asked to run as an independent. It was only after much urging that he consented; but at the polls he received 510 out of about 700 votes cast. In the evening he and Major Bradbury, his fellow member-elect from Newburyport, spoke at Market Hall. Bradbury, an old-line Whig, was popular with his constituents, but his reception was cold compared with that which greeted Cushing as the latter rose on the platform. He said very little of note, but he did refer with unconcealed emotion to his love for Newburyport and its people, and he touched casually upon the ostracism which had been his fate in the Whig circles.

On November 20, he lectured before the Newburyport Lyceum on the timely subject of *The Mexican Republic*, showing an extraordinary knowledge of that country's geography and natural resources. A week later he went to Washington, where he received a definite promise from Polk that his nomination as a general officer would not be long delayed.

When the General Court met on January 4, 1847, Caleb Cushing was in his seat in the State House. Almost the first business was the matter of an appropriation for

the Massachusetts Regiment, and a House Resolve, covering the matter at issue, was referred to a Committee of Seven, with Cushing as Chairman. On January 14, a majority of the committee, — four, with three dissenting, — reported in favor of appropriating $20,000, to be used in "raising and equipping a regiment from Massachusetts." The question now being open for debate, the proposed measure was furiously opposed by many of the Whigs. The majority report had stated that the committee believed all discussion of the causes of the war, its justice or injustice, to be irrelevant at that particular time; but this feeling was far from being the sentiment of the lower House. In the controversy which ensued, it became increasingly plain that the "Conscience Whigs" were bent on blocking the bill by fair means or foul.

While this debate was still going on, the Adjutant-General called a meeting of the commissioned officers of the regiment for the purpose of electing field officers. The candidates for colonel were Isaac H. Wright, Alden Partridge, and Edward Webster, besides Caleb Cushing, who, with the assurance of a Brigadier-Generalship ahead of him, was indifferent to the result of the ballot. He was, however, chosen over his competitors as colonel; and, on January 27, he was invested by Governor Briggs with his commission in that rank.

On the next morning, when the question of the regimental appropriation was brought up in the House, Colonel Cushing delivered his farewell, closing with words which moved even hardened legislators to expressions of deep feeling:

"Under the commission of Massachusetts we shall march forward to the mountain plains of the Aztecs. We have sworn allegiance to her with the oath of the heart no less than of the

Rufus Choate

lips. The mailed right hand of her escutcheon it is, *manus inimica tyrannis*, which waves us on to victory. Massachusetts men we are, and Massachusetts men we will be. We shall not, in those far-off regions, forget the green hillsides and bright streams of our native New England; we shall not forget her hardy yet kindly nature; we shall not forget the principles of patriotism and honor which we have drunk in at this their fountain-head in our own land of the Pilgrim Fathers of Plymouth and Massachusetts. We leave behind those the most dear to us in blood and affections; but the vision of their pleasant faces will pass before our memories in the silent night watches of the camp, like the cheerful gleam of stars in the sky above us; and we shall know that their prayers are never-ceasing to ascend in our behalf like sweet incense to Heaven, our safeguard in the hour of peril, and our consolation in the hour of suffering. And whatever may be the judgment of the House on the question immediately before them, — if they should arrive at the conviction that they cannot conscientiously pass it, — and they will not reject it without, — if the state should thus, as it were, refuse to acknowledge in formal manner us as the troops of the Commonwealth, still we cannot tear from our breasts the hope and belief that every heart in Massachusetts will beat with emotions of pride and pleasure when it shall be said, at the close of some well fought and hard won field of battle, that the glorious banner of the Commonwealth had, in our hands, borne itself manfully amid the smoke of the combat, and that we had done our duty manfully there in the name and cause of the Union."

The situation was a dramatic one, and Cushing made the most of it. The hall on Beacon Hill was crowded with listeners, and Cushing, in his uniform of a volunteer, was the one conspicuous figure. His valedictory address seems to us ornate and over-rhetorical; but it was undoubtedly sincere, and it stirred the audience as few such speeches have done. The Boston *Sunday Telegraph*, commenting on it, said:

"Many members who have credit for stoical indifference

were seen to wipe their eyes. The scene was dramatic, for the house was packed in every part, and in the pauses made by the speaker, it seemed as if all extra breathing were suppressed. When he concluded, there was an oppressive silence of some moments."

Colonel Schouler, editor of the Lowell *Courier* and one of Cushing's political opponents, wrote:

"His speech was one of the most eloquent productions I ever heard. I thought so at the time; I think so now; though the position he held as colonel of the regiment about to embark for Mexico doubtless added to the effect of the farewell. . . . The speech had a great effect upon the House, and I shall treasure it in my remembrance as one of those things that happen seldom in one's lifetime."

But Cushing's oratory had no practical effect. Not if he had spoken with the tongue of a Demosthenes could he have turned the obstinate Whigs from their course. To the enduring shame of the Whig Party in Massachusetts the appropriation for the regiment was voted down, approximately four to one. War had been waged for several months; battles had been fought and heroic deeds accomplished; but Massachusetts refused to stand behind the President. Charles Sumner actually argued in January, 1847, in the Massachusetts Supreme Court, that enlistments in the Massachusetts Regiment were invalid. On February 4, a demonstration against the war was held in Faneuil Hall, with Sumner, James Freeman Clarke, Theodore Parker, and others on the platform; but the attendance was small, and the speakers were interrupted by heckling from some of the soldiers of Cushing's regiment, who justly resented Sumner's characterization of the Mexican War as "a violation of the fundamental principles of morals."

The decision of the legislature did not interfere with

the equipping of the regiment. The work of mustering it into the service of the United States was soon completed. Whatever money was necessary was supplied by Colonel Cushing from his own purse. He advanced one month's pay to the men, and, before they embarked, he had expended over $5000 in purchasing necessities for them. Some loyal citizens, ashamed of the apathy in the State House, made gifts to the regiment. Abbot Lawrence sent Cushing a large consignment of shirts, socks, and handkerchiefs to be distributed among the privates. But the burden of the expense was assumed by Caleb Cushing himself, to the extent in all of nearly $12,000. In 1849, he was awarded by the United States Treasury the sum of $543.27 for obligations incurred in raising Company D, and $1201.99 for clothing, camp and garrison equipage, music, and ball cartridge furnished the volunteers before they were mustered into the United States Army. For most of his expenditures he was never reimbursed. Never did patriot struggle more courageously against obstacles of every kind.

Cushing made the most careful preparations for the expedition. With characteristic thoroughness, he omitted nothing which would enable him to master the technique of war. He took Spanish grammars, with the idea of renewing his acquaintance with that tongue; he packed in his trunk books on tactics and the proper disposition of troops; he bought his equipment only after consultation with experts. Many of his friends sent gifts for his personal use. One gave him silver spurs, another a military sash; several forced upon him patent medicines or remedies guaranteed to be efficacious against the dreaded Mexican climate. An elaborate ball was held in Boston for the benefit of the regiment. A group of his female admirers in Newburyport subscribed a

large sum for a present to him before his departure; but in some way he learned of the plan and wrote the committee, asking that the money be devoted to the purchase of certain essential articles for his men, and requesting that no gift, except a plain gold ring, be made to him.

One impressive public ceremony was to show that Caleb Cushing's conduct was approved by some, at least, of his countrymen. On February 18, at the Melodeon in Boston, Robert Rantoul, Jr., in behalf of a large body of his friends, presented Colonel Cushing with a sword, richly ornamented, bearing the words "Intiminatis fulget honoribus." The scabbard was chased with solid silver and heavily gilded, bearing Cushing's initials and marked with the combined arms of the Commonwealth and of the United States. Those who were present said that Cushing was so moved by Rantoul's remarks that he was for some moments unable to speak. When he did rise to reply, his voice trembled and he appeared deeply stirred. He could only express briefly the surprise and pleasure which he felt at such an ovation.

The time for ceremonies and presentations was rapidly passing. He resigned his seat in the General Court. He lingered a few days, arranging about business matters with his father and sitting for his portrait. At last, on March 8, he set out for Washington. His regiment had sailed two weeks before by transport to New Orleans, but Cushing had obtained special permission from Secretary Marcy to join them in that city. After a few days at the capital with his friends, Cushing went down the Ohio to St. Louis and thence to New Orleans, where he arrived towards the end of March. He wrote his father from Mobile, March 25:

"I have just time to say that I have arrived here in safety, & shall reach New Orleans to-night, which, considering my three days detention in Washington, will be doing very well. The *Remittance* has been spoken twelve days out, near Cuba, & will probably be at Brazos this week, & but a few days ahead of me. There has been a great battle between Santa Anna & Taylor, in which the latter has beaten, though with considerable loss, & there is great need of my troops on the Rio Grande, and I am anxious to be there as soon as possible, & so shall take the first conveyance from N. Orleans, from which I shall write again."

From New Orleans on March 27, Cushing wrote his father a letter revealing some of the financial complications which he had to adjust:

"In order to provide horses for the officers of my Regiment, which cannot be got at the seat of war, I have been constrained to advance $1000 to the Quartermaster here, for which I have drawn on you at 70 days date, in favor of Whitney & Co. . . .

I got most of my China account through while I was in Washington. By the time you receive this, there will be about $2600 subject to your order in the hands of Messrs. Corcoran and Riggs, Bankers, Washington. I found it convenient to have an agent there, & they are wealthy and safe. Of my account $260 was suspended to the next session, & $375 was to be passed immediately in addition to the $2600 there for you. I cannot say exactly, as the auditing was not quite completed.

My $4000 advance to the Regiment is perfectly sure & will be paid me at Matamoros. So also the last $1000. And I have no doubt of my being able to remit before my bill in favor of Whitney & Co. falls due.

I am quite well & shall sail for Brazos by the first steamer, say the 29th or 30th."

The warmth of Cushing's reception in New Orleans must have impressed him as in sharp contrast to the frigidity which he had met among the "Conscience Whigs" of Massachusetts. His stay was brief, but it was

long enough for two large public dinners, one of them in celebration of the victory of Buena Vista, and for the usual accompaniment of glowing war oratory. On March 31st, taking with him a handsome steed presented by the citizens of Mobile, he sailed for Brazos, the sandy, desolate port of debarkation at the mouth of the Rio Grande. He wrote his father on April 4, from Brazos:

"I arrived here safely this day from N. Orleans in the steamer *Telegraph*. The *Baring Brothers*, *Remittance*, and *Hamburg* had previously arrived, and the eight companies on board have gone forward to Matamoros, whither I shall follow to-morrow. The *Smyrna* is not yet in but is daily expected. The Regiment (so far as it has arrived) is in good condition, & superior (it is said here) to any troops of the same class which have been seen at Brazos. . . . You will hear before you receive this that Vera Cruz and San Juan are in the possession of Gen'l Scott."

Two days later, Cushing reached Matamoros, the border town on the south bank of the river, and assumed command of the post. Within a week he heard from General Taylor that he would be relieved at Matamoros as soon as a new detachment arrived there, — but the General added that he relied largely upon the discipline and orderly deportment of the Massachusetts regiment "in establishing quiet in the city and restoring confidence to the Mexican population."

A letter from Cushing to his father on April 15 gives an excellent idea of the situation which he was confronting:

"I arrived here on the 8th instant. Ten of my companies, the whole Regiment, are now here, eight having arrived just before me & two afterwards. There is also a Comp. of Artillery in Fort Brown, & of Tennessee Cavalry in the city, besides about 300 men in the General Hospital for the Army

which is established here, and some 200 employed in the Quartermaster's service, making with men on leave or awaiting orders, in all some 13 or 1400 men belonging to the Army, of which about 1000 are effective for military purposes. I am in command of the post & its dependencies at present, but hope ere long to have orders to go up to Monterey. But this city is one of the largest & most important on the river, & requires a strong garrison; so that, until additional troops come out to reinforce this line, I am as usefully employed here as I could be anywhere. Indeed, as the whole country is under martial law, I have my hands full of business, what with taking care of the troops, what with maintaining order & dispensing justice in the city. You will see by the paper enclosed that everything has to be done in a pretty summary way. I am gradually getting my men established in quarters in the best buildings in the city, & drilling them for service. Everybody says that the Massachusetts Regiment is superior to any other which has yet made its appearance in Mexico. Thus far there is very little sickness among my men, & the Regiment has had the unexampled good fortune of losing but one man since we left Boston. I am perfectly well myself."

In point of fact, Caleb Cushing was confronting a man's job in Matamoros. Here was a Mexican frontier settlement, crowded with disreputable persons ready to cater to the vicious propensities in the American soldiers, who were lonely, far from home, and free from the restraints of civilization. There were moods in which these New England troops were eager to snatch any pleasure, even though it was illegitimate, wherever it could be purchased. The inhabitants were far more to blame than the outsiders. The gamblers, rum-sellers and prostitutes who flaunted themselves before the eyes of the garrison were a menace to the *morale* of the post. Robberies and assaults were every-day occurrences. The Mexicans sold vile liquor to the Americans, who, in their drunken orgies, perpetrated deeds unpleasant to relate. Alto-

gether, Matamoros was precisely what Cushing described it as being, "a sink of pollution."

But Caleb Cushing had no intention of letting it remain a refuge for the criminal classes. An investigation showed that for some weeks there had been practically no discipline in the city. He had had little military experience, but he was sufficiently familiar with civil law not to fall into many blunders; and his mind was made up that the prevailing laxity must cease. Convinced that only stringent measures would be effective, he issued an order closing all gambling houses, prohibiting the sale of distilled spirits to any of the garrison, and shutting up all dance halls and houses of ill fame. On May 4, Cushing wrote General Taylor a formal report of what had been done:

"On arriving here, I found the city filled with a disorderly population of Americans, French, and Spaniards, whiskey dealers, blacklegs, and the like, whose only object was to obtain dishonorable gain at the expense of the health and money of the troops.

The Mexicans I found to be perfectly submissive (thanks to the victory of Buena Vista) and anxious only to be protected from violence.

Having, on consultation with Col. Taylor, Major Beall, Dr. McPhail, and other competent persons, determined to put my regiment in quarters, it became necessary to reduce Matamoros to the system and discipline of a garrison city. This was accomplished by the series of orders enclosed herewith. Numbers 1, 2 and 3 show the disposition of the troops in the garrison. Under these orders, Major Abbot had six of my companies in or near the Plaza, connected by a line of sentinels; and three other companies near at hand; the tenth occupying Fort Parades; and everything which our joint care and experience could do, by night patrols, guard mounting, and daily drills and parades, was done to render the garrison effective and secure in a military point of view.

Numbers 4 and 5 relate to the police of the city.

I need hardly say that these orders have been executed to the letter; for the accomplishment of which the field officers of the regiment possessed peculiar facilities in the personal attachment of the company officers and men, which enabled us to act with decision and confidence.

Under one of these orders, a large quantity of spirituous liquors has been seized, including that in the hands of the Spanish Consul, D. Juan Lopez, of whom it was needful to make an example, and remains embargoed in the custody of the Quartermaster of the regiment; it not seeming to me expedient (without orders from the Commanding General) to confiscate spirits which had been brought here and had been so long openly sold by the sufferance of previous Commandants.

Number 6 established a military commission for criminal matters. It is in daily session, and is very useful.

Number 7 established a commission for a certain class of civil controversies. . . . The tribunal was desired equally by Americans and by Mexicans; and I have no doubt of the power to create it; but Col. Davenport had doubts on the subject; and its sittings are now suspended, although it has not been dissolved."

Taylor shortly sent Cushing a note heartily approving these various disciplinary measures, and commending him for his diligence and energy. Cushing needed encouragement from his superiors, for his strictness did not increase his popularity with his men. Temperate and law-abiding himself, he had very little patience with devotees of self-indulgence, who insisted on sporting with some disreputable Amaryllis in the shade when they should have been scorning delights and living laborious days. When it was apparent that his commands were not being taken seriously, he instructed Major Abbot to enter all open grog shops with an armed detail, expel the occupants, and place sentinels on guard in front of each place thus closed. This severity, entirely justified though it was, did not improve the feeling of the dis-

solute population toward the *Puritanos*. A few miserable malcontents went so far as to hang Major Abbot in effigy; and the *Matamoros Flag*, a disgraceful sheet printed in the town, assailed Cushing with countercharges, all of them ridiculous. Some of these vile and absurd accusations made their way north, and appeared now and then in Whig newspapers, which were endeavoring to discredit the war and saw fit, therefore, to spread abroad slanders on American officers. When one such libel was brought to his attention, Cushing wrote to the Boston *Atlas* as follows:

"I am led to believe, from some remarks on the subject in the *Atlas*, that misconception exists in regard to the facts attending the exhibition of an effigy of Major (now Lt.-Col.) Abbot, in Matamoros, while he was stationed there in command of the Massachusetts Regiment; and as I am certain that you can have no disposition to do injustice to that meritorious officer, I trouble you with a few lines of explanation.

When the Massachusetts Regiment arrived at Matamoros, we found it infested with low gambling and drinking houses, and abounding with disorderly persons from the United States; and it required very stringent measures to preserve the troops from demoralization under such circumstances. Major Abbot executed with great promptitude, vigor, and success the order issued by successive commandants of the post for the suppression of the evils in question. This subjected him to the ill will of the gamblers and other disorderly persons out of the regiment, who testified their spite by getting up the effigy. As this was done because of the faithful and honorable performance of a public duty on his part, it ought obviously to be considered as a matter of credit to him, rather than of disparagement, and in this light I trust it will be considered by the friends of Lt.-Col. Abbot at home."

Nothing can be more contemptible than the way in which the Whigs in Massachusetts, through their newspapers, — especially *The Daily Chronotype*, — ma-

ligned and traduced Caleb Cushing. No incident was too trivial to give an opening for slander. As he was leaving his headquarters in broad daylight, with two members of his staff, he stepped aside from the narrow footwalk in the main square of Matamoros in order to let a lady pass, and slipped into a gutter, breaking some of the bones in his ankle. His Adjutant, Captain Davis, helped him to his room, where he was confined to his bed for nearly a month. This accident gave his unscrupulous opponents an opportunity to accuse him of having been engaged in an intrigue with a fair *senorita*, and the story, once started, did not easily die. To those who knew Cushing's habits, the tale was so inconceivable as to be ludicrous; but it persisted almost to the end of his days in the mouths of his evil-wishers, as similar falsehoods about Roosevelt's drunkenness or Wilson's immorality have lasted in our own time.

In truth, the abolitionists and "Conscience Whigs" of Massachusetts were utterly unscrupulous in their methods of attack. Wendell Phillips, late in May, delivered an abusive speech against the great Webster, and took occasion to bring in Cushing's name:

> "The blood of liberty has curdled from the Hancocks, the Adams's, and Quincys, into the Caleb Cushings of the Massachusetts volunteers. Whence came Caleb Cushing? How did he dare to be born within the encircling arms of Cape Cod and Cape Ann? How did he find breath to draw in the same town that produced Garrison? Nature never made him; our institutions made him."

Talk like this, and much of a similar tenor, reached the ears of Caleb Cushing. All that malignity, petty spite, and vile tongues could do to injure his reputation was done while he was absent, wearing the uniform of his country; yet to this day no one has been able to produce

a shred of evidence to his discredit during the Mexican campaign.

Cushing's appointment as Brigadier General reached him on April 29. The commission, which was dated April 14, 1847, was given to fill the place vacated by Brigadier General Quitman, who had been promoted to be a Major General. President Polk wrote Cushing a personal note informing him of the good news:

"A bearer of despatches to Vera Cruz will leave Washington to-morrow. The Secretary of War will transmit to you, by him, to be forwarded to you on the Rio Grande, a commission as Brigadier General of Volunteers, which I conferred on you, on yesterday. In selecting you for this high command, I have been influenced alone by public considerations. I duly appreciate your merit as a citizen and an officer. Your patriotic efforts to raise the regiment which you now command are worthy all praise. You had great obstacles to encounter, but finally succeeded, though opposed by all indirect means, by the wealth & aristocracy of the Federalists of Massachusetts. I address this hasty & unofficial note to you to express to you the pleasure it has afforded me to promote you to this distinguished command."

Cushing's acknowledgement of Polk's letter was delayed until June 1, on which date he wrote the President:

"After having, in consequence of a severe fracture of the leg, been confined for three weeks in a position in which it was barely practicable for me to sign my name, I avail myself of the earliest moment to express, in the first place, my profound sense of obligation for the distinguished honor you have done me in conferring my present commission in the army, and, in the second place, to acknowledge the receipt at a subsequent day of the esteemed favor you were so good as to address me on the subject.

I am fully aware that, so far as the country is concerned, the post in which you have seen fit to place me demands the

utmost possible degree of devotion to the public service, and that it is by such untiring effort for the proper discharge of my official duties that I shall, most satisfactorily to you, manifest my gratitude for your favorable appreciation.

But I cannot the less entertain the warmest feelings of personal gratitude to you for thus affording me the opportunity of larger usefulness to our common country, and I shall view with pride & pleasure the occasion, when I shall be so happy as to enjoy it, of requiting in any however humble degree your personal kindness.

I sustained my present injury early in May, while proceeding, after tea, in company with Col. Belknap, Lt. Garesche, and Mrs. Rose, to call on the family of the Alcalde, in consequence of having slipped on the stones of the court in the main square of Matamoros. It was a severe double fracture of the leg at the ankle. Fortunately my confinement has occurred while awaiting orders, and has been of no prejudice, therefore, to the public service; & the perfect general health which I previously enjoyed has made my recovery so rapid as to enable me, now that I have received orders from General Taylor for Monterey, to proceed thither at once.

I cannot forbear to congratulate you on the exalted rank among the nations of the earth which under the wisely planned & courageously executed program of your administration, the United States has been able to assume; and amid all the cares & anxieties of power, this reflection that you have conscientiously and successfully administered the government, must give tranquillity to your mind, & fill you with emotions of thankfulness to that good Providence which watches over & guides the destiny of men & of states."

Before this, however, Cushing had told his father of the new honor that had come to him. On May 3, he wrote John N. Cushing:

"You will have heard, of course, of my unexpected promotion. I do not know whether to be glad or sorry. I was getting on well with the Regiment, which in health, discipline, appearance, & good order, far surpassed any other troops of the same class which have come out to the Rio Grande, and I fear

there may not be the same degree of harmony with a new head. But I have insisted with General Taylor to have the regiment in my brigade, so as still to have an eye on its welfare.

I am here awaiting orders from General Taylor, much fearing that the victorious advance of General Scott on Mexico will leave nothing for us to do in that quarter.

I have been, & am in perfectly good health, & there is no more sickness in the Regiment than there would be among the same men in Boston."

It is no wonder that Caleb Cushing was getting impatient. He had left Massachusetts with the hope of getting at once into action, with the injunction ringing in his ears, "Go, where Glory waits!" The administration of a dirty garrison town, especially when directed from a hospital cot, was irksome beyond belief. His restlessness was not quieted by the news that came from others, more fortunate than he. Taylor, it is true, had settled down in the vicinity of Saltillo and Monterey and was there awaiting instructions; but General Scott, after capturing Vera Cruz, had dispersed the opposing army at Cerro Gordo, on the road to the capital, and had proved to the Mexicans that "Iron, — cold iron, — is master of men all." As he had moved on from that point to Jalapa and Perote, the enemy had retreated before him, and in mid-May he had reached Puebla, the second city of the republic. Accounts of this spectacular advance reached General Cushing from time to time, and did not make him any more contented with his idleness.

He was, however, getting better, and on May 14, told his family that his leg was "perfectly well." On the next day he received a welcome order to report at Taylor's headquarters, and with it a personal note from the Commander allowing him, on account of his injury, to postpone the trip inland as long as necessary. Cushing hastened to settle some matters of business connected

with the Massachusetts Volunteers. He called a meeting in order to choose new field officers for the regiment, with the result that Isaac Hull Wright, of Roxbury, was unanimously elected to succeed Cushing as Colonel. Major Abbot took Wright's former place as Lieutenant-Colonel, and Edward Webster, much to his father's delight, was promoted to Major, in the place of Abbot. When Cushing's letter announcing these proceedings reached Beacon Hill, Governor Briggs, with an obstinacy and smallness of mind which must have been exasperating, refused to issue commissions to the new officers, on the ground that certain technical state regulations had not been complied with. The regiment was, however, now under national jurisdiction, and Briggs's discourtesy was more irritating than actually harmful.

Early in June, General Cushing set out for Monterey, where he reported at once to General Taylor. He wrote his father, June 23:

"I have only time before the close of the mail to say that I arrived here in safety on the 20th, after a march of 16 days from Matamoros. My general health is excellent, & my leg is so well that I walk freely, & rode on horseback more than half the way up from Camargo. I am now encamped near General Taylor at the famous camping ground of the Wood of San Domingo, near Monterey. In a few days I shall proceed to Saltillo, to the advance of the Army of Occupation, to take command of a Brigade there, composed of the Virginia, North Carolina, and Mississippi Regiments. The Massachusetts Regiment is to remain at present in garrison, part at Cerrado under Lt. Col. Abbot & part at Monterey under Col. Wright."

Cushing's immediate superior was the high-strung but impartial Brigadier General John W. Wool, of the Regular Army. During the Mexican War, volunteer officers and those from the regular establishment did not always meet on friendly terms. With both Taylor and

Wool, however, Cushing's relations were uniformly amicable, and he was with them constantly at social gatherings.

On Independence Day the volunteers arranged for a celebration. Early in the forenoon, Colonel Wright marched to Camp Taylor, where, in the picturesque grove at Walnut Springs, the other troops were drawn up in gala array before "Old Rough and Ready" and his staff. Here General Cushing delivered what was described as a "glowing and eloquent" speech, of the kind to which he was accustomed in New England on similar occasions. Taylor, who was a man of few words, responded briefly. In the afternoon a dinner was given for General Taylor in Arista's garden at Monterey, followed by the formidable series of toasts so typical of that period. Lieutenant Fuller, of the Massachusetts Regiment, introduced a political element by referring to Taylor as "our next President," this being the first time that he had heard himself publicly named for that honor. Taylor's reply, reduced to lowest terms, was simply, "Barkis is willin'." He then proceeded to toast Massachusetts, and, after Colonel Wright had spoken some appropriate sentiments, Captain Montgomery, the Chairman, introduced General Cushing:

> "The orator of the day, scholar, statesman, and soldier. An ornament to his country at home and abroad. We doubt not that his sword will prove as irresistible as his eloquence."

This celebration and the accompanying speeches were reported at length in most of the Northern papers, and the Whigs made the most of what Taylor had said. Taylor had, of course, been mentioned for the Presidency already. A letter from Webster to Cushing, dated June 18, had referred to the matter:

"I can write you but a short letter to-day, & that only for the purpose of thanking you, heartily, for your kindness to Edward, which I shall never forget, & for your various friendly communications.

I got home about the 10th, — tolerably well, but still reduced, and somewhat weak, — fever, but eight days at Marshfield have done me good, — & I hope soon to be quite strong.

I rejoice that you have moved onward, & hope soon to hear of you at Gen'l Taylor's H. Q. You see what a spreading fire the Gen'l has kindled here at home. I have little personal acquaintance with Gen'l Taylor, but have always thought highly of him, especially during the war with the Florida Indians. His recent military achievements, as far as I can judge, show not only courage and conduct, in the field, but a large foresight, & a comprehensive grasp. With intelligent people, his sensible manner of writing does, perhaps, almost as much for him as his military prowess."

But Caleb Cushing must have had strange thoughts while he listened as Taylor was greeted as the successor of Polk. He had already been asked by Charles W. March, one of Greeley's assistants on the New York *Tribune*, to write confidentially what he thought of Taylor's views and of what he might do if elected. His reply had been cautious, as befitted any comment of a military subordinate regarding his superior; but it is certain that Cushing watched with much concern the movement among the Whigs to turn to Taylor as a Presidential candidate. The Mexican War had been initiated and supported mainly by Democrats, among whom he now occupied no inconspicuous position; and the Whigs, sheltered beneath Taylor's growing prestige, were preparing to reap the political benefit. He could not help viewing the situation with chagrin and disappointment.

For the moment, however, he was occupied more in trying to get where there was action. He was now with Taylor's army, in a position of trust; but hostilities had

ceased along that front and there seemed no prospect of their resumption for several months at least. Cushing, therefore, begged for an opportunity to join Scott, who was now well on his way to Mexico City.

Taylor's proposed advance of fifty miles, against no opposition, from Monterey to Saltillo, had no allurement for Caleb Cushing, who did not hesitate to press the matter of a new assignment. At last, on August 18, he received his coveted order to proceed to Vera Cruz, there to assume command of the 2d Division and then, with this force, to follow General Joseph Lane into the interior.

Two weeks later General Cushing set out on the march from Monterey to Carmargo, at the head of a heterogeneous caravan, which included many civilians who availed themselves of his protection to reach the coast in safety. Pushing on rapidly, he came to the mouth of the Rio Grande, only to discover that there was a lack of transports and a deficiency of troops to relieve him. He therefore established a temporary rendezvous near Palo Alto, at a place called Sabiniti, where his regiment could be in instant readiness for embarkation. Here, during his four weeks' delay, he found himself harassed by depraved rum-sellers, who could not be kept outside the camp limits. He issued a series of special orders, but the vendors defied them. Irritated beyond endurance by this indifference to his commands, he directed that one John Chamberlain, a notorious offender, should be apprehended and receive twenty-five lashes on the bare back. The sentence was duly carried out, and there was no more trouble in camp.

Day by day Cushing lingered at Sabiniti, without being able to secure from the Quartermaster any transportation for his brigade. He complained and threatened, but

without result. At last he seized some unused public steamers lying along the banks of the river, loaded his men into them, and started for Vera Cruz. For this act he was criticised by the Quartermaster General for exceeding his authority, but he defended himself so vigorously that the matter of his alleged insubordination was never pressed. Cushing simply did what any resolute character, — Roosevelt, for instance, — would have done under similar circumstances.

Early in October, General Cushing, with his improvised transports, arrived in the harbor of Vera Cruz, in the bay where Cortez, on Good Friday, 1519, had landed his troops on the desolate sands. The regiment was disembarked and organized in camp along the beach at Vergara, two miles north of the city. Cushing found the spot to be fairly healthful, and with very little fever; but it was damp and windy, and on one occasion his papers were blown away in what he describes as a tremendous "tempest," which tore down tents and drove the sea up over nearly the entire camp.

Here, too, he had his troubles with discipline. The uniforms originally assigned to the volunteers had, in the course of nine months of rough service, naturally worn out, and the grey coats, jackets, and overalls to which the soldiers had grown accustomed were now so dirty and tattered that the men could not always be distinguished from teamsters and camp-followers. Finding themselves in rags, moreover, they had adopted all sorts of weird wearing apparel, such as straw hats, colored coats, and other variegated articles. Not only did they look like a motley crew, but they could frequently secure themselves, by this disguise, from detection in thieving and other breaches of the regulations. Thoughtful of their comfort and appearance, Cushing had new uni-

forms issued to them, like those of the United States Regulars; whereupon, with strange perversity, many of them protested against donning this costume. Company H was so vociferous in its disregard of direct orders that Cushing finally deprived the mutineers of their arms, placed them under arrest, detached them from their regiment, and shut them up in the dark hold of San Juan de Uloa Castle, in the harbor. Under this summary treatment and on a diet of black bread and water, it took the refractory company less than twenty-four hours to reflect, repent, and express a willingness to put on the uniform. In its effect, discipline like this proved to be highly salutary. It was unfortunate that other volunteer officers, fearing unpopularity, were more lax than Cushing, and allowed disorder to go unreprimanded.

General Joseph Lane, following Scott,[1] had already preceded Cushing on the route to Mexico City; indeed, on October 9, Lane had met the Mexicans in considerable force between Jalapa and Puebla, and had driven them back with only a small loss to himself. Cushing had been instructed to follow Lane, and, in late October, he started with his brigade along the poorly-kept national highway to the capital, the mysterious, romantic city of the Aztecs. On November 2, at Santa Fe, not far from Vera Cruz, he wrote his father:

"I am thus far on the march, with a column of some 3000 men, in advance of General Patterson, who is to come up with the rest of the troops and meet me at San Juan. Soldiers are

[1] Scott had left Vera Cruz on March 29, and on April 18 had overwhelmed a much larger Mexican army at Cerro Gordo. Reaching the Mexican plateau, he had won in August notable victories at Contreras, Churubusco, and Chapultepec, and, on September 14, after a series of terrific assaults, had entered Mexico City. He begged the war department for reinforcements, and it was in response that Lane and Cushing were sent forward.

continually arriving at V. Cruz from the U. S., and I think the Mexicans will soon find themselves completely overwhelmed. I met Mr. Bankhard, the British Minister, day before yesterday, and he told me he saw no prospect of peace."

In his usual way, Cushing had made plans carefully for the overland journey through Cerro Gordo and its famous battle-field, Jalapa, Perote, Puebla, and on to the great plateau city. Diagrams in his own hand still exist indicating with what deliberation he investigated places to camp for the night, where wood and water would be abundant. He was familiar with the tale of Cortez, who, facing unrecounted and indefinite perils, sank nine of his ten ships and cut himself and his followers off from home and fatherland; and Cushing, as he rode along, thought often of the stout Spanish adventurer who, three centuries and more before, had gone

"Out to seek an age of gold
Beyond the Spanish Main."

The march was constantly varied and extraordinarily fascinating. For a day or two they were still in the *tierra caliente*, the land of flowers, but also of the deadly *vomito*. After a long climb to Jalapa, halfway up the ascent to the table-land, the boys from cold New England found a paradise where spring was the only season, a wonderful valley of warm foliage and tropical blossoms, where bright birds flew everywhere and the sun was seldom clouded. To the soldiers it seemed like a heaven, which they never wished to leave. In the background of all this glorious color rose snow-capped Orizaba, the "star mountain" of the Aztecs, which had towered before them all the way, pointing to the blue sky, like a lofty and awe-inspiring guide from the gods.

Here Caleb Cushing wrote his mother, on November 17, from his headquarters at Cadeno:

"You are so much accustomed to hear from me at all sorts of places, that you will scarcely wonder at the sight of a new name. We marched from Santa Fe on the 2d, and arrived here safely in an easy week's march. We have now been encamped here a week waiting for another train and more troops to come up from Vera Cruz, which will be in about another week, when we shall proceed to Perote de Puebla.

Cedeno is in the hills about three miles from Jalapa. The whole country is perpetually covered with the brightest verdure, and abounds with cattle, corn, and vegetables and fruit in countless variety. Oranges are as abundant and cheap as apples in Newbury. In the summer it is a beautiful place of residence. But in the fall and winter, though the days are warm, yet the nights are like our March or April, and the profuse dews keep everything wet, — all of which makes it rather uncomfortable at present in camp."

As they moved on to Puebla, they could catch glimpses of the snow-clad ranges of the great hills near the capital. And then, at last, they looked out over the far-flung valley, where the ancient city lay stretched before them, its wide lakes gleaming in a golden sun, with the gray volcanoes for a barrier towards the west.

In charge of an army on the march, General Cushing showed himself to be a stern disciplinarian. He treated pilfering with the utmost severity, and inflicted painful penalties for misdemeanors. Once a teamster grew sullen and refused to perform some simple duty; whereupon Cushing took the law into his own hands and had the fellow soundly horse-whipped, even administering some of the blows with his good right arm. He made no attempt to be tactful, but he was always scrupulously just.

His habits of exactitude, regularity, and precision still

clung to him. He insisted that the members of his staff should always present a neat appearance, and obliged them to shave at least once a day, even when they were camping in a wilderness. Being ordinarily very busy, he was impatient of unnecessary interruption. Once, says Captain Davis, he was visited by one of his captains, who, without any perceptible errand, talked for an hour on miscellaneous gossipy topics. Cushing, who had much to do, was visibly uneasy, and the officer had hardly withdrawn before he burst out, — "What business does such a damned fool have to take up the valuable time of a general officer?" He was constantly in search of information. With his inveterate hunger for facts, he took time in every village to send for antiquarians or public officials who could tell him something of its history. His imagination, too, was kindled by the gorgeous scenery along that paved road through a land "where every prospect pleases, and only man is vile." He was indifferent to exposure, and bore hardships with a Stoicism which was an inspiration to his companions. Then, in the evening twilight, after labor was over, he was ready for conversation; and he would sit on his three-legged camp-stool, where he could face the mountains, and chat with his staff or with casual visitors, astonishing them all with his reminiscences or with his speculations on their strange experiences. His comrades noticed his fondness for old friends and his aversion to any change or break in his habits. Captain Davis refers humorously to the two quill pens, which lasted throughout the campaign, and were used until they were worn up to the feathers. But these peculiarities only heightened the impression which every one received of his powerful personality. Above all, it was his amazing activity of mind, his insatiable curiosity, his marvellous attention to details, which marked him

out as exceptional. Within a few months he had become a true commander, whom his men obeyed and trusted. He was no tinsel soldier, no parlor chieftain, but a leader, and he could have stood bravely the test of battle.

The last part of the march down into the Mexican valley was taken through rain and a cold north wind; but, on December 8, General Cushing rode along the highway over which Scott had already gone with his triumphal army into the American headquarters at Mexico City. That afternoon he wrote his father:

"General Patterson arrived here on the 6th with the cavalry of the Division, Colonel Wilkins yesterday with a part of the infantry, and I entered to-day with the residue, making in all an addition of about 3500 men to the Army under General Scott. I have suffered somewhat in flesh from the extreme vicissitudes of climate which I have passed through during the last three months, but am happily in the enjoyment of perfect health. I have not been here long enough to learn anything as yet of future movements, but the large additions to the Army which have arrived, — or will soon arrive, — will, of course, be followed by active operations. I write in a haste, having but just got into the city, — for a mail which goes down immediately."

On the evening of that day he was invited by General Scott to have dinner with him and his staff. He rode on horseback with a party through Contreras and Churubusco, visiting the battle-fields of August and September and getting a good survey of the environs of the Aztec stronghold. Scott had been in undisturbed possession of the city since September 20, and, when Cushing arrived, the inhabitants were quite reconciled to his occupation. The newcomer was shortly assigned to duty at the advance posts of General Scott's line at San Angel, eight miles south of the city and two miles from Churubusco, his division consisting of volunteers from South Carolina,

Texas, New York, Massachusetts, and Pennsylvania. Here, with ample leisure, he had an opportunity for study and reading, as well as for observation of the country about him. It was as a result of some of his investigations that he wrote to William H. Prescott,[1] on January 1, 1848, the following interesting letter:

"I cannot forbear expressing to you the high gratification I have derived from reading your *History of the Conquest of Mexico*, among the scenes which it so graphically and beautifully describes.

The Second Conquest affords many points of analogy with the First, which strike the observer on the spot. I am posted with five regiments at San Angel, and my rides of duty or recreation in the neighborhood afford me ample opportunity of noting these analogies; among others, the fact that General Scott originally advanced to the city by the causeway of San Antonio, and finally by that of Tacuba, though certainly not because Cortez had done the same.

I am struck with the general accuracy of your local descriptions of the face of the country. They could have received little additional force or truth from personal inspection of it.

The chief exception I should take to the views of the country you present is in regard to the absence of trees on the table-land and the cause of it.

In the first place, most of the *cerros* are covered with trees now, as they were at the time of the Conquest.

In the second place, every spot of earth in the great valleys, as in those of Puebla and Mexico, which can be watered, is cultivated. That cultivation consists of maguey, maize, and barley, garden vegetables, and fruit trees. I think the number of the latter is greater than at the time of the Conquest. I think also that the number of ornamental trees is equally great, for

[1] William Hickling Prescott (1796–1859) graduated from Harvard in 1814, when Cushing had just finished his Freshman year, and the two were well acquainted, although not close friends. Prescott's *Conquest of Mexico* had appeared in 1843, at which time Cushing had read it. It is an interesting fact that Prescott had never been to the country which he so admirably described.

most of the cypresses that remain, and other trees, have been planted around the villages and *haciendas*, and along the *calcados*. But the cultivation of fruit and ornamental trees is incompatible with that of the profitable crops of maguey or grain; and of course on the irrigable land, the latter predominates. The parts of the table-land which are naked now must have been naked always, because they consist of the irregular swells of the table-lands which are utterly destitute of moisture and are not capable of producing any larger vegetable growth except of the cactus family appropriate to the particular soil and climate. To be sure, in the time of the Conquest, there was more water in the valley of Mexico than there is now; and in the swampy borders of the water there might have been cypress trees, which only flourish in such situations, and which have now disappeared, but, on the other hand, the regions left by the retiring water, as for instance on the south side of the city between San Angel and the *garitas* of La Piedad and San Antonio, are now a perfect garden of cultivated fields of maguey, interspersed with clumps of trees in which nestle the numerous villages and haciendas, the effect of which is, that, from any elevated site, the prospect embraces a landscape of the most diversified elements of water, trees, buildings, and cultivated fields, in my opinion quite equal, if not superior to, its appearance at the epoch of the Conquest.

Among the minor topographical points of absence of perfect accuracy, there is one of sufficient importance to be noted. The name of Iztaccihuatl (white lady) is not derived merely from the white tunic of snow which covers the summit, but from the circumstance that the summit is a snowclad long ridge, which resembles (and not slightly) the form of a woman recumbent on the back, with the head, breast, body, legs, and feet all represented as clearly to the eyesight as the coffer or chest on the summit of Perote.

You have, of course, seen the translation of your *History*, with the additions made by Mr. Ramirez and Mr. Goudea in the shape of notes and appendix.

I am buying some books and collecting antiques, but I have little time for the purpose, as my official duties keep me at San Angel, and I am in daily expectation of orders to march to the North. An officer stationed in Mexico could collect a great

deal that is valuable in the way of MSS, the public archives and convents being in our hands, and of antiquities, for which proper researches by excavation have never been made. The slight military excavations made in throwing up breastworks at Tlalelolloco have brought to light a vast quantity of vases and figures, thus confirming the conjecture of Gama, quoted in one of your notes. If we remain in possession (as the present prospect is), doubtless somebody will have zeal and taste for excavating, especially in places of known capability of yielding good results, such as Mexico, Tezcoco, and Tercocingo."

When he arrived in Mexico City, Cushing found there letters which had for him some very interesting gossip. Among them was a note from John Tyler, dated November 1, 1847:

"Your last acceptable letter from Monterey reached me after a long delay, and gave me the agreeable intelligence that you commanded the men of the Bay State and Virginia. As a Virginian, I rejoice in this, because I am sure that Prudence and Valor will go hand in hand, and while situations of the most imminent danger will not be declined when to occupy them seems necessary, rashness will be avoided as the antagonist to sound and deliberate courage. Unless the sons have degenerated from their sires, your command is destined to illustrate the fame of their ancestors and to reflect imperishable glory upon yourself. The union in the same corps and under the same commander of the two regiments, is so congenial with the past in the history of the two states, as to be exceedingly agreeable to my feelings. Would to Heaven that the only rivalry between Massachusetts and Virginia and their citizens could be none other in all time to come, than for the good of the country and the happiness of the human race. . . .

Our friend, Wise, has returned and made his bow at Washington. I have not yet seen him, altho' I flatter myself that I shall enjoy that pleasure before long. He would doubtless rejoice very much to be with you, although a whisper has gone the rounds that he is studious and deeply engaged in theological subjects. Nay, I have heard it stated that he is studying for the ministry. I give you the rumor without in any way vouch-

ing for its truth. The political parties are both at fault for suitable candidates for the Presidency. Many of the Whigs still look to Mr. Clay while others speak of Gen'l Taylor. Mr. Webster has been nominated by the Whigs of Massachusetts and New Hampshire. On the Democratic side no distinct move has yet been made. I think it, however, pretty obvious that Mr. Buchanan is at the moment in advance of his competitors. He has come out pretty strongly against the Wilmot Proviso, and the result of the Pennsylvania election, which has resulted in the triumphant re-election of Shanks as Governor, gives force to his claims. In New York the Democrats are at odds and ends. The Van Buren faction has been badly beaten at Syracuse and the other night at Tammany. It has avowed itself in favor of the Wilmot Proviso and against the regular nominations made at Syracuse. Believing you still interested in all that is going on in this country, and deeming it probable that the above particulars have not reached you, I have thought it might amuse you, in an interval of duty, to be placed in possession of them. Your nomination as Governor of Massachusetts is, from all I have heard, well received by the Democracy of that State, and Mr. D. Henshaw, with whom I lately fell in company, thinks your election probable. Should it occur, I will raise a bonfire in honor of the Corporal's Guard.

That new glory and new honors befall you is the sincere wish of myself and family."

Tyler's references to the political situation in Massachusetts make it necessary for us to return, for a brief period, to the elections of the previous fall. While he was on the beach at Vergara, preparing to march to the capital, the Massachusetts Democratic Convention met, on September 22, at Worcester. Democratic chances in that state, as we have seen, were not ordinarily reckoned as very good; but in 1847, with the war as an issue, it looked as if many Whigs, more loyal to their country than to their party, might be tempted to favor a candidate known to approve an aggressive and relentless campaign against the enemy. It was natural, therefore, that

the Democrats, searching for a leader with a war record, should welcome Caleb Cushing, for he represented in his ideals, his public utterances, and his conduct precisely what they were supporting. All this the inner circle of politicians readily saw, and they laid their plans accordingly. On the first ballot, Cushing had 153 votes against 117 for Isaac Davis; and on the second, he received 264, sufficient for the nomination. Henry W. Cushman was then named for Lieutenant-Governor on the first ballot. The platform praised the Independent Treasury and the Tariff of 1846; justified the Administration in its Mexican policy; condemned the General Court for allowing the volunteer regiment to go forth "naked and unprovided"; and assailed the Whigs on other less important counts. Altogether it was a platform on which Caleb Cushing, in his first venture on a Democratic ticket, could stand, without either embarrassment or equivocation. The Democratic slogan was to be, — "Cushing, a well-fed soldiery, — our country against the world!"

There was barely time to get an answer from Cushing before the day of the election; but his friends notified him at once, pressing him to accept. Samuel F. Bridge, immediately after the convention had adjourned, wrote:

> "You have been nominated by the Democratic State Convention as Governor of this state. . . . The state is sure to be Democratic and decidedly so within a year or so, and then you are destined to be either Governor, Senator, or a member of the Cabinet. This nomination will aid you in every way, and I have assured the leading men in the party that you will take it. The battlecry is 'Cushing and the War.'"

Robert Rantoul, Jr., on the same date, said to Cushing: "You were nominated with *great* enthusiasm, & the stir in the city & country is great. You *must* accept."

William Cushing, on September 24, added his word of

advice: "Father is much pleased; both Uncle Henry & himself are in favor of your standing the election."

The Committee appointed to notify Cushing, headed by Benjamin F. Hallett, sent him a formal announcement of his nomination in the following words:

"Your Democratic fellow-citizens, feeling that you are with them on the great questions of the times which now divide parties, and that, through you, they can distinctly present the issue to the people, whether in time of war, it is the duty of a good citizen to stand by his country or to give aid and comfort to the enemy, have selected you as their candidate."

The Democratic press would ordinarily have felt constrained to do some explaining in order to justify the choice of a former Whig; but in 1847 Cushing's patriotic course of action needed no excuse. The Boston *Post*, on September 24, struck the key-note when it said editorially:

"It is needless to say there was no concert and no caucussing to secure the nomination of Caleb Cushing! It sprung up, spontaneous, from the body of the convention, and grew into a settled purpose to go *for the man who went for giving clothes to the volunteers of Massachusetts!*"

The Newburyport *Advertiser* said all that was needed when it concluded:

"No man in the state has done more to support the war than General Cushing; it is doubtful if, without his aid, the Massachusetts regiment would have reached the seat of war, — or, if so, in any decent plight."

The campaign, thus frankly opened on the war issue, was clean-cut from start to finish. The Whigs, especially the "Conscience" group, were still unreconciled to the war. The Free Soilers, headed by Charles Sumner, had demanded the withdrawal of our troops from Mexican territory. In a public meeting, he had said:

"The war is not only unconstitutional, it is unjust; it is vile in its object and its character. It has its origin in a well-known series of measures to extend and perpetuate slavery. It is a war which must ever be odious in history, beyond the common measure allotted to the outrages of brutality which disfigure other nations and times."

Against such doctrines as these, Caleb Cushing had taken a positive stand. In his letter of acceptance, sent from Mexico on October 18, he joined himself with the Democrats: "With the Convention, I heartily approve of the conduct and policy of the existing administration of the Federal Government."

Going at length into the causes of the war, — remote and immediate, — he deplored the unpatriotic and inconsistent course of the Whig leaders, including Clay, and showed how plainly impossible it was for him to support their policies. The Democrats were pleased with their convert. They delighted in comparing Cushing with that staunch old Federalist, Samuel Dexter, who, in 1812, left his party because it would not stand by the nation in its war with England; and the parallel was sufficiently close to be effective as argument. To ensure Democratic unity a large ratification meeting was held in Faneuil Hall, at which enthusiastic speeches were delivered; and, when Caleb Cushing was formally welcomed into the Democratic fold, his name was greeted with tumultuous applause. As the campaign drew to a close, the *Post* printed daily a significant paragraph from his letter of acceptance:

"I have thrown my life into the scale of my country's cause against my country's enemies here in Mexico; and I will not hesitate to risk my honor for the sake of what I conceive to be my country's cause in Massachusetts."

On October 21, John P. Robinson, of Lowell, a well-

known Whig member of both the House and the Senate, made public a letter in which he declared his intention of voting for Cushing. He said, in part:

> "I shall vote for Cushing for the noble and independent stand which he took in the last legislature in favor of clothing the soldiers sent to this Mexican War. I have been no advocate of the war itself. I think it an exceedingly unfortunate one. But, as the country is involved in the war, it is the duty of every good citizen to stand by his country."

Meanwhile the Whigs, who had renominated Governor George Nixon Briggs by acclamation, were not idle. They also had their mass-meetings and their public assemblages, but their methods were those of vituperation and personal slander. All the baseless charges against Cushing's character were revived, and new ones were fabricated. The various changes were wrung on the "senorita" episode, according to which Cushing was alleged to have broken his leg while going to an assignation. His strict discipline was transformed into malignant cruelty. His repudiation of Clay was designated as political treachery. Seldom has a candidate been more shamefully abused or more flagrantly misrepresented.

The Whigs had as an effective ally, James Russell Lowell, who, in his *Biglow Papers*, satirized the Democrats and the Mexican War, making Caleb Cushing, — "Gineral C.," — his chief target. Much of the ignorant prejudice of which Cushing has been the victim is due to the malice and venomous insinuation of Lowell's verse, which has a literary quality usually lacking in contemporary satire. Lowell was actually making a bitterly partisan attack in the midst of the heat of a political campaign; but many of the casual phrases have passed into literature, with the result that Caleb Cushing's reputation has suffered with those who do not know his career.

When Robinson announced his intention of supporting Cushing, all Boston was soon ringing with Lowell's stanzas:

"Gineral C. is a dreffle smart man:
He's ben on all sides that give places or pelf;
But consistency still wuz a part of his plan, —
He's ben true to *one* party, an' thet is himself; —
So John P.
Robinson he
Sez he shall vote for Gineral C.

Gineral C. he goes in fer the war;
He don't vally princerple more'n old cud;
What did God make us raytional creeturs fer,
But glory an' gunpowder, plunder an' blood?
So John P.
Robinson he
Sez he shall vote for Gineral C."

The platform on which Briggs, — Lowell's "Guvener B.," — had been renominated by the Whigs declared that Massachusetts would never consent that any Mexican territory, however acquired, should be added to the Union, except with an explicit provision that negro slavery should not be tolerated therein. Briggs was by no means a brilliant man, but he had made a creditable record in the State House for three years; moreover he represented the conservative doctrines of New England Whiggism, and was acceptable to Whigs and Free Soilers alike. This feature of Briggs's rather colorless character is well brought out by Lowell:

"Guvener B. is a sensible man;
He stays to his home, an' looks arter his folks;
He draws his furrer ez straight ez he can,
An' into nobody's tater-patch pokes;
But John P.
Robinson he
Sez he wunt vote for Guvener B."

It was in harmony with Lowell's purpose to denounce war in the abstract, and to ridicule the military aspirations of men who, like Cushing, had volunteered for military service. Hence we find Hosea Biglow saying:

> "Ez fer war, I call it murder, —
> There you have it plain an' flat;
> I don't want to go no furder
> Than my Testyment fer that."

Lowell actually advised men to keep out of war on the ground that they would get nothing from it, — a curious blend of idealism with selfishness. So it is that Birdofredom Sawin, Lowell's imaginary hero in several of the satires, voices a spirit of international humanitarianism quite unusual in that age, and even speaks sympathetically of the Mexicans:

> "Come to look at 'em, they aint much diff'rent from wut we be,
> An' here we air ascrougin' 'em out o' their own dominions,
> Ashelterin' 'em, ez Caleb sez, under our eagle's pinions,
> Which means to take a feller up jest by the slack o' 's trowsis
> An' walk him Spanish clean right out o' all his home an' houses;
> Wal, it does seem a curus way, but then hooraw fer Jackson!
> It must be right, fer Caleb sez it's reg'lar Anglo-Saxon."

It needs no sage to show that these lines contain little of either poetry or truth.

Many of the phrases in Lowell's satire are excerpts from Cushing's own speeches, strangely perverted in their meaning; and the latter's patriotic utterances are used as texts for burlesque. Sometimes Lowell refers to Cushing by implication, as in Number VI, *The Pious Editor's Creed*, in which, with Cushing's Chinese Mission in mind, he makes the speaker say:

"I du believe it's wise an' good
To sen' out foreign missions,
Thet is, on sartin understood
An' orthodox conditions;—
I mean ten thousand dolls. per ann.,
Nine thousan' more fer outfit,
An' me to recommend a man
The place 'ould jest about fit."

Then Private Sawin, of the Massachusetts Regiment, is made to describe his experiences, and does not neglect to bring in the affair of the "senorita." One evening, when he was starting out "to go to a fandango," he was stopped by a sentinel:

"The sentinel he ups an' sez, 'Thet's furder 'an you can go.'
'None o' your sarce,' sez I; sez he, 'Stan' back!' 'Aint
you a buster?'
Sez I, 'I'm up to all thet air; I guess I've ben to muster;
I know wy sentinels air sot; you aint a goin' to eat us;
Caleb haint no monopoly to court his seenoritas;
My folks to hum air full ez good ez hisn air, by golly!'"

Private Sawin has, of course, many causes of complaint. The Mexican country is "the meanest place a skunk could wal disciver"; the reptiles and vermin are bad beyond belief; and the "ossifers" who recruited them so politely have become stern and unyielding at the seat of war. He gives his versions of the Colonel's opinions, especially what Cushing has to say about the enemy:

"He sez they'd ought to stan' right up an' let us pop 'em fairly,
(Guess wen he ketches 'em at thet he'll hev to git up airly),
That our nation's bigger'n theirn, an' so its rights air bigger,
An' thet it's all to make 'em free thet we air pullin' trigger,
That Anglo Saxondom's idee's abreakin' 'em to pieces,
An' thet idee's thet every man doos jest wut he damn pleases."

The influence of Lowell's satire lay largely in its time-

liness, in its frank expression of the convictions of a considerable number, — perhaps the majority, — of New Englanders, who could see in the Mexican War only one more attempt of Southerners to add more slave states to the Union. Lowell, himself, like Garrison, was not averse to disunion, if we accept what he says in his poem:

> "Ef I'd my way, I would ruther
> We should go to work an' part, —
> They take one way, we take t'other, —
> Guess it wouldn't break my heart."

But even he, it should be added, did not go so far as some of his fellow Whigs. The Haverhill *Gazette* had deliberately asserted that volunteering, or voting a dollar for the war, was moral treason against the God of Heaven. The Boston *Chronotype* expressed the wish that the American armies might, to a man, be swept into the next world.

Lowell's poem is a highly original and indigenous contribution to our literature. But, if we are occupied with the less romantic task of seeking out the truth, we must read beyond its lines. One has but to study the thorough and scholarly Chapter Five (*The American Attitude on the Eve of War*) in Smith's *The War with Mexico*, with its mass of evidence from the press and public men of that period, to be convinced that Lowell, although he interpreted with much accuracy one phase of political opinion in Massachusetts, was very far from expressing the sentiment of the nation as a whole. The fact is that the New England Whigs were as much out of touch with the great bulk of the country in 1847 as the New England Federalists were in 1812. It was fortunate indeed for the future of the United States that James Russell Lowell and his party represented only a minority of the voting population.

In Massachusetts, however, Lowell's satire was taken as gospel. Against the impression made by the stinging lines, the Democrats struggled valiantly, hampered always by the fact that their candidate [1] was unable to appear in his own behalf. There were moments, indeed, when, in spite of the tradition that made Massachusetts a sure Whig state, it seemed as if General Cushing might achieve the impossible. But at the close of the campaign the desperate Whigs redoubled their libels. On Tuesday morning, November 2, the unscrupulous Boston *Chronotype* appeared in an "Extra" crammed with outrageous charges against Cushing, including an editorial condemning him for his public whipping of the rum-seller, Chamberlain, at Sabiniti. These accusations, false though they were, had their effect, especially since Cushing was not there to deny them. Nevertheless, on November 9, the morning after the election, the *Post* announced that Cushing had defeated Briggs, and Hallett sent him a letter telling him that victory was certain. Further returns, however, reversed the first count, giving Briggs 52,202 to Cushing's 38,454, with 11,928 scattering. It is worth noting that Cushing gained some 9000 votes over the Democratic total for the previous year, a fact which indicates the popularity which he acquired through his war record.

As for Caleb Cushing, who had heard very little of what had gone on in his home state, he was never very optimistic about success in the gubernatorial election, and he accepted his defeat with philosophical cheerfulness.

[1] Though he knew most of his literary contemporaries, Cushing seems never to have become well acquainted with Lowell, and certainly disliked him. In later years, when Lowell succeeded him as Minister to Spain, Cushing was told by a friend that Lowell had many admirers in Boston. "Yes," snapped the old General, "and none warmer than himself."

It was a far heavier blow to him that he had reached Mexico City too late to take part in any military operations. Even before the final assault on Chapultepec, the President had sent Nicholas P. Trist as a special commissioner, with a draft of a treaty which he was authorized to present to the Mexican Government; but the Mexican Cabinet insisted on dilatory and prolonged negotiations, and Trist, confronting an administration which did not know its own mind, could secure only unsatisfactory concessions. Secretary Buchanan, disgusted with Trist's failure, recalled him; but the latter, as a private citizen, assumed powers which he knew had been revoked and, on February 2, 1848, signed a treaty with Mexico at the little town of Guadalupe Hidalgo, north of the capital. This treaty, forwarded with great speed to Washington, arrived on Saturday, February 19. On Sunday the Cabinet discussed its terms; on Wednesday it was submitted to the Senate, which ratified it on March 10. Within a few weeks the American flag was hauled down from the public buildings in Mexico City, and American troops were evacuating the conquered territory. The Mexican War was over.

Before that date, however, Caleb Cushing was back on his native soil. There was a certain fascination about the life which he was leading at Mexico. The Mexicans of the higher classes were hospitable and friendly. The climate was temperate, and there were always hours of leisure which he used in investigating ruins and studying the remains of an almost vanished civilization. But when the possibility of action disappeared, Cushing had no wish to linger among strangers. Furthermore the letters which he received from his family made him feel that duty called him home. His sister, Lydia, wrote from Newburyport, January 20, 1848:

"It is nearly a year since you left us, and I hope you will not think of staying longer. . . . Father's health is about as usual, but he is very much depressed. His nervous system is out of order, and he has never recovered from the shock of Philip's death. He told someone the other day he had been only half alive for a year."

Cushing had also been saddened by the death of Major Edward Webster, his-aid-de-camp, who contracted typhoid fever, and died on January 23. It fell to Cushing to write the sorrowful news to Daniel Webster, who was broken-hearted over the death of his favorite son. He wrote Cushing, March 12:

"The afflicting intelligence of Edward's death was brought by Mr. Messenger, who brought the Treaty, & who left Mexico the 2nd of February. He learned it in Mexico, and the N. O. papers have since published extracts, announcing it, or adding to it, from Mexican papers. But up to this time we have no private letters, or private accounts, & have nothing from his servants.

I am sorely smitten by this calamity, but endeavor to submit, with patience, to the will of Heaven. His remains, I presume, will be sent home, by your care, or that of the officers of the Regiment, & I have requested General Gomes to write to New Orleans, to have all things done, which may be necessary to be done, if the remains shall come that way. I am exceedingly anxious to get private letters and accounts."

Within a day or two Cushing's long account of Webster's last hours reached the sorrowing father, and gave him the details which he desired.

Before leaving Mexico, Cushing was entrusted with one last task of no very attractive character. General Winfield Scott, whose vanity and complacency were familiar to all who knew him, had preferred charges against Generals Worth and Pillow, and Colonel Duncan, accusing the last two officers, among other things,

of having disparaged the accomplishment of the Commander-in-Chief, and the first of having written the Secretary of War regarding Scott's alleged tyrannical treatment of Pillow and Duncan. President Polk, who did not like Scott, had several reasons for not wishing to uphold that commander's accusations against Pillow, his personal friend. He therefore ignored the plan for a Court Martial and sought for some other method of examining the case, with the hope that Pillow might be the more readily exonerated. On January 11, 1848, Polk made this note in his *Diary:*

"Cabinet meeting, — Sec'y of War proposes a Court of Inquiry into cases of Gen'l Worth, Gen'l Pillow, & Col. Duncan, — and proposes as members of the Court Brev't Brig. Gen'l Tomson, Gen'l Cushing, & Col. Butler. Mr. Buchanan expressed some objections to Gen'l Cushing, but I was of opinion that they had no weight."

Just what the cautious Buchanan had to say in disparagement of Cushing will never be revealed; but when the Court was established by a War Department order, General Cushing was a member, his colleagues being Towson, the Paymaster General, and Brevet Colonel William G. Belknap, with Captain S. C. Ridgely as Judge Advocate and Recorder. General Scott, on February 18, was formally recalled, and turned the command of the army over to General W. O. Butler.

On the same day, General Cushing and the other members of the Court convened at Puebla for organization, but adjourned at once to Mexico City, where they sat for more than a month. During this entire period, it was occupied solely with the case of General Pillow. Scott himself conducted the prosecution, but Pillow, who was a veteran lawyer, managed his defense with the utmost skill and cleverness. Of the members of the Court,

Cushing, because of his knowledge and experience, was unquestionably the most valuable. The affair itself was rather unsavory, and, as it dragged along from day to day, it was quite evident that each side was proceeding with an eye to the political effect to be secured. Everybody was pleased when the Court, late in April, transfered its sitting to the United States. On May 23, Cushing arrived in Washington, and Polk made a note in his *Diary:*

"Brigadier General Caleb Cushing of the U. S. Army called to-day. The Court of Enquiry of which he is a member, which has been sitting for some weeks past in Mexico, has adjourned to the U. S., and will resume its session at Frederickton on the 29th instant. I had an interesting conversation with General Cushing concerning affairs in Mexico, and particularly the prospects of a ratification of the Treaty by Mexico. Mr. Buchanan, Mr. Marcy, and Mr. Mason of the Cabinet were present during the conversation."

The Court reassembled in perfunctory fashion on May 29 and continued to sit until July 1, still ostensibly examining the testimony against General Pillow. Eventually the Court came to the only logical decision, — that, while some features of Pillow's conduct were open to criticism, no further action against him was advisable. On July 7, the Secretary of War, — undoubtedly to Polk's secret gratification, — directed that the proceedings against Pillow be dropped. The cases against Worth and Duncan had already been dismissed.

Caleb Cushing was now free to return to civilian life. He applied at once for relief from duty, and was shortly superseded on the Court of Enquiry, which was still nominally in existence, by General Whiting. Cushing left at once for Boston, where, on July 20, he was honorably discharged from military service. Two days later

the Massachusetts Regiment, which had sailed home from Vera Cruz, was welcomed back to the old Bay State. After disembarking, the volunteers had been quartered at Brighton in a temporary camp; from there, on Saturday, they marched into the city, where they were received with proper ceremony on the Common by the state authorities. In the afternoon came a dinner at Faneuil Hall, the troops, who occupied eight tables in the center of the room, looking, as the Boston *Statesman* put it, "embrowned by seventeen months of unexampled toil and exposure." The presiding officer, Charles G. Greene, Esq., called first upon Colonel Isaac Hull Wright, Cushing's successor in command of the regiment, who spoke in brief terms of his men. Brigadier General Childs then followed with a brief address of congratulation. The Chairman then turned and proposed this toast:

"General Cushing, — for his readiness to defend his country in the councils of his country, and for his readiness to defend her in the field, he stands high in the hearts of his fellow-citizens."

When Cushing rose, there was some disturbance in the rear of the hall, caused by some irresponsible ruffians who had suffered from his strict discipline in Mexico. Only two members of the regiment, apparently, took part in the demonstration, and they were promptly ejected by their comrades. With characteristic coolness, General Cushing calmed the excited throng and continued in a short and modest speech, closing with a sentiment which touched every heart:

"The memory of Major Webster, Captain Felt, and other officers and men of this regiment deceased in Mexico; their memories will live immortal in the hearts of their countrymen."

Other addresses followed, in the orotund and expansive style of the pre-Rebellion days, and the gathering did not break up until nearly sunset. Then, as evening descended, the regiment went briskly through a dress parade on the Common, performing their evolutions skilfully and standing at "Attention!" while the bugles sounded "Retreat," as they had so often done in far-off Mexico. Their uniforms were the worse for wear, and the men looked as if life had not been all "beer and skittles"; but they were a robust and well-trained body of soldiery, in every respect a credit to the Commonwealth which had disowned them.

On the following Tuesday, Caleb Cushing was welcomed back to Newburyport, of which he was now the foremost citizen. As he approached the outskirts of the town, one hundred guns were fired; and, when his tall, erect, and soldierly figure stepped from the train, the crowd burst into loud cheers. That evening, at a public meeting in Market Hall, he delivered a significant address, his first important political utterance for many months. It is in this speech that we can detect, almost for the first time, a change in Cushing's attitude towards slavery. His intimate association with Southern statesmen during the Mexican War had given him a more sympathetic appreciation of their problems. He could now see that it was much easier to talk about the abolition of slavery than it would be to accomplish it, and he came to recognize that the South, as well as the North, had its rights in the matter. He denied the power of Congress to legislate with regard to slavery in any state; he maintained further that Congress could not exclude slavery from any territory; and he asserted that to make this matter a political issue was to endanger the permanency of the Union. He closed with a prediction:

"If the idea of a sectional northern party be pushed to the excess indicated, a *Union* party will spring up in the north, formed of all those men, however now divided by party names, who, animated with purer and more rational sentiments of true liberty and love of country, conceive that the preservation of the federal union is an object of greater magnitude and importance than the mere abstraction of whether the regulation of labor in New Mexico or California shall be prescribed by Congress, or left to the existing or the future legislation of the people of these territories."

He was far from being in any sense an apologist for slavery, but he regarded it apparently as Hancock regarded the tariff, — as a "local issue." He did, however, care mightily about the Union, and he could not endure to have it endangered by sectional prejudice.

It will readily be believed that he had no apologies to make for the course which he had taken before and during the Mexican War. If he had any regret, it was that he had never heard a gun fired in action or seen a foeman slain on the battle-field. But he did know that he had never evaded a responsibility, and that his failure to reach the fighting line was due to no evasion on his part. So far as his attitude towards Polk was concerned, Cushing had nothing to lament. The Whigs had won in Massachusetts, but the Democrats had carried through the annexation of Texas and added a vast territory to the Union. Even the Whigs, moreover, had been obliged to rely, as a last hope, on prestige gained from the Mexican War, and they crowned their inconsistency by nominating for the Presidency the very general who had helped to win the war which they had opposed. As Caleb Cushing recalled a speech which he made in the Massachusetts Legislature on January 8, 1847, he must have looked upon himself as something of a seer:

"Parties may play with public affairs in times of peace, and agitate upon this or that trivial question of the day; but when war comes, parties cannot stand before it; in its irresistible march, it crushes them like a tornado tearing its pathway through the forest. It absorbs, controls, dominates, all the passions and emotions of men and of nations."

CHAPTER TWELVE

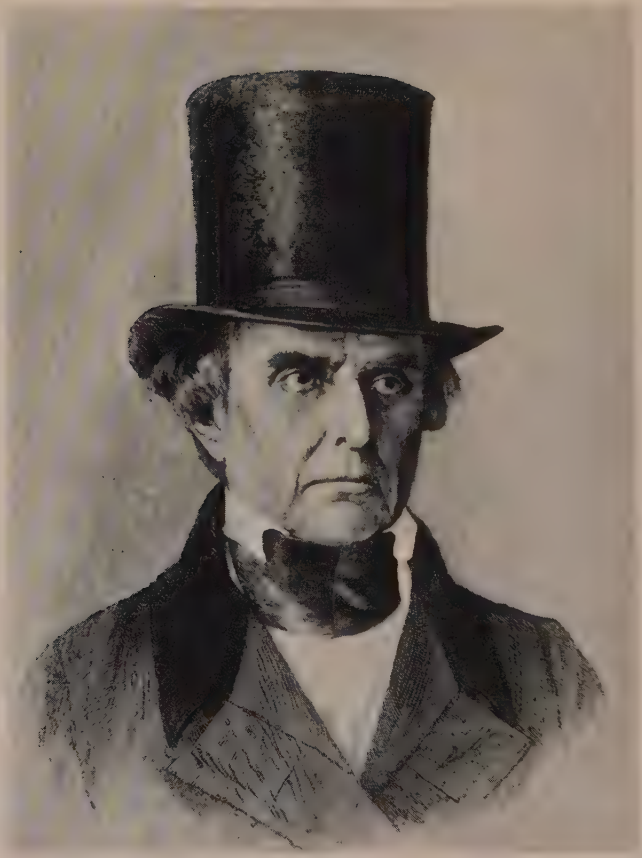
THE JUDGE AND PRESIDENT-MAKER

"His soul would not conspire
With selfish men to soothe the mob's desire."

It took Cushing some weeks to assort and arrange the various curios and *objets d'art* which he had brought with him from Mexico. Among his acquisitions were vases and other bits of fine porcelain, valuable books, and even old paintings. None of these was a masterpiece, but each had an interesting story, and they have been carefully preserved in the Cushing family. In matters of this kind he had a sound and discriminating taste, and he was seldom deceived.

He found himself now in a position where he must settle down to earn a living. Never a careful manager, he had left his father to administer his finances, which were, to say the least, confused. Many debts, for instance, were owing to him, a large proportion of which were virtually outlawed. With prodigal liberality, he had signed his name to notes of friends, some of whom had neglected to meet their obligations when they fell due. In his absence, assessments had been made on $5000 of his St. Croix Company Stock, and John N. Cushing had been compelled to meet the demands of the directors. It is small wonder that his father wrote him:

"I don't do my business as loosely as I have done some of yours since you left here. . . . I will send on your account, which you will see has got to be large, & I advise you to stop lending money on your name."



Daniel Webster

When the war closed, Cushing owed his father rather more than $2600, and his accounts at several banks were overdrawn. If Caleb Cushing wished to do so, he could earn money very rapidly at the law. Large retainers were regularly at his disposal from wealthy corporations. Indeed the acquisition of money was for him so easy that he was disposed to be quite indifferent to the accumulation of debt. But his recent expenses in connection with the Massachusetts Regiment had been heavy, and for the moment his mind was troubled.

It is, perhaps, a fitting time to dwell somewhat in detail on Cushing's financial relations with Daniel Webster. We have already seen that Webster had frequently borrowed money from Cushing, much of which had never been repaid. In February, 1847, before leaving for a war from which he might conceivably never return, Cushing asked Webster to make some arrangements for settlement, using his son, Fletcher, as an agent; but Webster replied, February 6:

"I do not wish to say any thing, to any one, even to Fletcher, about the matter you refer to. Pray keep all the papers together *till you & I meet.* Things move so slowly that perhaps you may be here again, before you embark. There are very especial reasons, at this moment, for saying not a word to any body about that which your letter relates to."

No further meeting took place at the time between the two men, and Cushing did not trouble Webster again until August 25, when, after his return from Mexico, he wrote him as follows:

"While preparing to go to Mexico, and in the arrangement of my affairs for the contingency of not returning, I wrote to you at Washington, proposing the liquidation of our accounts through the intervention of Fletcher; but you preferred to have them stand until we should meet; and there was no time to

attend to it during my brief stop at Washington afterwards on the way to New Orleans. I came to Boston at this time partly in the hope of seeing you and attending to this now; but I find you are at Marshfield. Shall you be in Boston any day next week, when I may see you on the subject? It is with extreme reluctance that I trouble you in regard to it; and I would not do so if not impelled by the most urgent inducements in consideration of which you will, I trust, pardon me. Will you do me the favor of informing me, by letter addressed to Newburyport, when I can have the opportunity of seeing you in Boston; or, if you prefer it, I will call upon you at Marshfield. The balance of cash is $5909; and of interest thereon about $3000."

This was certainly a courteous kind of a "reminder," and Webster replied with equal politeness:

"I rec'd your last evening, & make an effort to answer it, this morning; but such is the state of my eyes, that reading and writing are nearly impracticable. I shall go up to Boston to stay some time, as soon as my catarrh will allow me; but I fear this may be 10 days, or a fortnight. If this delay should be inconvenient to you, I will see you here, — or at N. Port, — or make a special visit to Boston. Please let me know what may be done."

In answer, Cushing wrote on September 1:

"I have yours of the 29th. I sympathize with you in your affliction of the eyes, for I have myself been suffering from the effects of a fever which disabled me for several weeks.

In regard to the amount, it would greatly relieve my present straits, if you would send me notes or acceptances on time, which I may use in payments which I have to make or in providing means for payments, leaving the balance to be liquidated when you are well enough to come to Boston."

Webster, however, found it impossible to reach Boston as early as he had suggested, and Cushing, who owed considerable sums to his father-in-law, Judge Wilde,

felt constrained to send another note to Marshfield, September 21:

"I assure you that I am greatly distressed for means to meet engagements of others for which I have as an act of friendship made myself responsible, and every day during the three or four weeks past that I have been anxious to see you on the subject has tended to augment my troubles."

After some misunderstandings as to appointments, the two did eventually meet, and Webster seemed eager to adjust his debts; but he had no resources with which to make payments. Cushing was very patient and allowed a winter to pass without writing Webster again. In the meantime he himself was obliged to borrow money in order to pay his creditors and meet his current expenses. During the spring of 1849, the two again had a conference, and Webster attempted to negotiate some loans, but without success. On July 26, 1849, Webster wrote:

"I have a quantity of real estate in the West, which I think valuable. The first opportunity, I will speak to you about it. I shall be in the city every few days, & hope we may meet. Any day, almost, after next week, I can be here, if I learn that you are to be up."

In his later years, Webster's western property became like the "Tennessee lands" in Mark Twain's *The Gilded Age*, full of promise even when poverty seemed about to descend. On September 1, in response to another appeal from Cushing, Webster again referred to them:

"I have been in N. H. for some days, to try the effect of the mountain air, on my annual catarrh, with which I have been and am now quite seriously oppressed. In N. H. I rec'd your letter. You cannot be more anxious, my dear Sir, than I am to put our affairs into more definite form. It is an object of which I do not lose sight for a single day. I mentioned

to you that I had property remaining in the West. The enclosed paper describes it. It has cost me an immense sum of money, and, from all the accounts I have, I believe it could be made of great value. It is free and clear. I wish you would take pains, at my expense, to make inquiries about it, and learn what it is worth. There seems nothing else that I can do, until some of these *claims* shall be decided on.

It seems difficult to meet. I am little in Boston, and, while this catarrh lasts, I shift about, from place to place, to find relief, from coughing, sneezing, and inflamed eyes. The President's arrival here (if he shall arrive) will, of course, bring me here, as well as yourself. If he should not arrive, the very time I can calculate on a day of tolerable freedom from this catarrh, I will see you, somewhere."

On October 13, Webster wrote from Marshfield:

"I have become able to attend again to my correspondence, without borrowing another's eyes, & write to say that I am ready to sell you a part, more or less, of my Rock Island property, preferring to let you take enough to pay your debt. The object is, to find out its value. L. C. Turner knows all about it. He is now at Cincinnati. If you retain your connections in that quarter, it will be easy for you to see him, as you travel that way, & see the property. If you expect no such opportunity soon, I will try to bring him to Washington, December 1, or adopt any other measure you may suggest to hasten this business. After the first of next month, I shall be in Boston, mainly, till I go South."

On November 27, negotiations had gone so far that Webster deeded to Cushing more than six hundred acres of land in Illinois, — "the town-plot of 'Rock Island City,'" so-called; and Cushing at once wrote to Turner, informing him of the transfer and asking for some advice about it. On the same day, he sent a note to Stephen A. Douglas, requesting him to recommend a trustworthy land-agent and attorney residing in Rock Island County.

It shortly turned out, however, that the land had been sold for non-payment of taxes to a man named Brackett, and that it would be necessary to start litigation before a clear title could again be obtained. Webster wrote, on April 11, 1850, from Washington:

"Will you, & can you, in May or June, or when it suits you, if I will advance 3 or 4 hundred dollars for your expenses, go to Rock Island? There is no other way, I think, to get any salvage out of what ought to be a large property."

Cushing found it impracticable to leave for so long a trip; and, in the meantime, Webster was appointed as Secretary of State under Fillmore. Cushing wrote him on September 14, 1850, as follows:

"I have been daily expecting for the last month to go to Washington; otherwise I should have written to congratulate you, as I now most heartily do, on your accession to the State Department. The death of General Taylor seems to have saved the country from Civil War. To you, it must be a proud triumph to step at once over the heads of your enemies and be giving audience to Mr. Lawrence and the rest.

It has given me peculiar satisfaction, also, to witness the election of my classmate, Samuel A. Eliot, and to note the manly and independent course he has pursued in the House.

I suppose your engagements have caused you to overlook my letter of July.

I have received a proposition in regard to the Rock Island City tract, which requires attention, and is the immediate occasion of my writing to you.

Mr. Brackett, who holds the tax titles as against you, offers to release on payment of his outlay & a bonus of $100, making in all about $300.

The suit comes in October, and therefore it is desirable to reply instantly.

Upon the fullest investigation of the subject, I find that the land has now little or no value, excepting for agricultural purposes. . . . I will, as you may think best, either trade with

Mr. Brackett to get a release from him & so clear up the title, or sell to him."

Webster's answer was sent from Washington on September 20:

"I have received your letter of the 14th inst.

I hope there will be no *sacrifice* of my interests in the matter in question, and I commit them to your care & keeping. I am, in all things personal and pecuniary, always unfortunate. I do not see that I shall ever be able to pay my debts. I wish I could *see you*, & settle what is between us, this fall, by some sort of proceedings. I suppose you may as well sell to Brackett, if you can get anything."

The despondent note in Webster's letter was due very largely to one of his periodical attacks of hay fever, from which he was then suffering. On September 12, he had written:

"This disease is depressing and discouraging. I know that there is no remedy for it, and that it must have its course. It produces loss of appetite and great prostration of strength."

Under the circumstances, Cushing refrained from pressing his demands any further, and nothing was accomplished or said until the following summer. Then Cushing once more requested Webster to make some kind of a settlement; and Webster replied from Washington, June 6, 1851:

"I shall be at the North about the end of this month, and hope to be able to propose something which may be satisfactory to you. At any rate, I will do all I can. These Mexican claims have terminated in a result which has utterly astonished me."

Still nothing was done, but Cushing, although himself in debt, hesitated to harass a sick old man. Finally, in

November, Webster gave his note for $2000, which Cushing did not attempt to discount but put away among his papers. It was fortunate, for Webster, on April 6, 1852, wrote from Washington:

"Will you be kind enough to inform me where my note to you will be found, which becomes payable at or near the end of this month? I am making every possible effort to get money enough together to pay it; but after all, I may be compelled to ask a renewal of some part of it."

Cushing at once notified Webster that the note was in his possession, but begged Webster to try to meet some small part of the obligation. Webster, on July 21, wrote from Boston:

"I have rec'd your letter, & know not what to say to it. But I will fix a day for seeing you before I go South. You cannot be in greater trouble than I am."

The pathetic last sentence of Webster's note stated the simple truth. On May 8, he had been thrown from his carriage and severely bruised. The Whig Convention, held at Baltimore, had rejected Webster as its candidate and named the pompous General Scott. It is not surprising that Webster was completely discouraged, even after Boston had given him its magnificent public reception of July 9.

But Caleb Cushing, too, was in embarrassing circumstances, and he could get no definite reply from Webster. When the latter went South on August 6, he wrote Cushing:

"I am suddenly summoned to Washington, to be about ten days. On my return, I will meet you in Boston, & we will conclude our business, somehow. I am ready to make any sacrifice in my power, & have been meditating on several modes of adjustment."

Cushing once more waited, but to no avail. He had now for four years been asking for some payment on a just debt; he was still disposed to be lenient, even indulgent, to an afflicted statesman; but he found it difficult to endure procrastination and indifference. On September 11, 1852, he wrote a final appeal, explaining his own situation without reserve:

"On receiving your letter of the 30th ult., I immediately wrote to you intreating an interview on your arrival in Boston; and I am grievously disappointed in having missed you there, & in finding here to-day, on my return from Springfield, no reply from you.

I am really rendered desperate by the troubles in which I am involved by friends in whose favor I have not only stripped myself of the means of subsistence, but become involved in controversies for which there is no possible end but death.

I have taken the office I now hold (Justice of the Supreme Judicial Court of Massachusetts) from sheer necessity; and I must, of course, attend to its duties. The business of the Court has been so arranged for the Fall Circuit that three is the minimum number of a bare quorum for each County; and I have no longer any control of my time for nine months to come except a probable week or two in December or January.

What I ask of you regarding our account is, —

1 —To have the debt liquidated. I have never been able to conceive why for so many years you have refused to do this.

2 — To have security for the principal. Why, out of the large estate you have, you should be unwilling to do this, I cannot conceive.

3 — To receive the interest annually, as upon any other regular investment.

It seems to me that these are all reasonable, such as a brother, a son, or the dearest friend might address to you. I must beg you, therefore, to relieve me from the loathsome task of continued solicitation as to this matter; & to dispose of it now at once, for I am half desperate from trouble.

I see but one way to arrange this business, and to avoid leaving it to further indefinite procrastination. It is to employ an

intermediate agent to adjust the amount. Will you send a person of your own selection to Lenox? Or shall I select and send one to Marshfield? "

Webster's reply was written, September 16, by an amanuensis, and read as follows:

"I have received your letter. My catarrh attacked me, the day before I left Washington, butt-end first. I hastened home as fast as I could, and here I have been, ten days almost, without being able to leave the house.

As soon as I can use my own eyes, and my own hand, I will write you farther, and assure you. I will see you, if life lasts, before many weeks pass, and hope we can arrange things to your satisfaction.

Please write me, from time to time, letting me know whereabouts you are and will be."

Only one more communication came to Caleb Cushing over Webster's signature, — a letter on September 30, 1852, enclosing his note of hand for $2500:

"I hope you can turn the enclosed to some account. It is the best I can do, till I see you. Whoever takes this may rely on its being met with punctuality *if I live*. I do not expect to be able to go to Boston for some days."

When the note came due, Daniel Webster was sleeping in his grave at Marshfield, within the sound of the salt waves. He died on the morning of Sunday, October 24, 1852.

Webster left behind him little but debts, and his executors had much difficulty in straightening out his affairs. In April, 1855, at the request of Mr. R. M. Blatchford, one of the executors, Cushing made out his account, which was duly submitted but never paid. In the following November, an article appeared in the New York *Evening Post* alleging that Cushing lent to Webster the

sum of ten thousand dollars in consideration of receiving the appointment as Minister to China; that Cushing had recently presented a claim on the estate, which the executors had declined to pay; and implying that Cushing was unfaithful to a corrupt bargain made in 1843. The article was but one of a series of libelous attacks on Cushing, most of which he ignored. This particular accusation, however, was so venomous and preposterous that Cushing, then Attorney-General, sent a private letter to William Cullen Bryant, the editor of the *Evening Post*, denying the charges *in toto* and giving a summary of the facts regarding the financial relations between himself and Webster. The letter is dated, January 5, 1856:

"It was natural for me, in early life, to be drawn into the sphere of a citizen of my own state of such superior intellect, high political position, and attractive social qualities, as Mr. Webster. A friendship ensued, which lasted to the end of his life. On my side, it is the simple truth to say, there was constant, sincere, disinterested, self-sacrificing attachment.

The *Post* is guilty of extreme injustice to Mr. Tyler, Mr. Webster, and to me, in imputing any other than public and honorable considerations to my appointment to China. Nothing but the bitterness of political prejudice can deny to me competency of political position and qualifications for that mission, the duties of which were promptly performed by me, and its honors and emoluments voluntarily resigned, so soon as its primary object was accomplished.

I repel indignantly the idea that any pecuniary transaction between Mr. Webster and myself had the remotest possible relation to public offices. It is painful to have to speak of the subject at all; but the fullest exposition of the facts will not throw so much as the shadow of reproach on the public honor of either of us.

I loaned to him $3000, April 21, 1837; $3000, May 8, 1839; $2000, June 29, 1841; $2000, February 5, 1843; with several smaller items of account of both earlier and later date.

These were cash loans of mere friendship, legal debts, moral debts, debts of honor.

I have now before me numerous letters and other papers of his on the subject of these loans, which it would give me pleasure to exhibit to you. The following is of comprehensive tenor and significancy:

'Boston, Oct. 8, 1848

Whereas I am indebted to Hon. C. Cushing in divers sums of money on divers obligations, given at different times, I here agree and acknowledge that the said Cushing has given time on said debts, at my request, and agree that neither I nor my representatives shall or will set up any limitations or statute of limitations, against said debts.

DANIEL WEBSTER'

Among other letters of his before me are those of August 6, 1852, September 16, 1852, and September 30, 1852, — each recognizing the indebtedness. He died within a month afterwards.

I do not know how to add force to the mere facts. It is sufficiently distressing, nay humiliating, to be thus compelled in justice to myself, still more to Mr. Webster, thus to lay bare transactions between us, most innocent in themselves, but which some evil-doer, alike ignorant and malignant, has been permitted to misrepresent and pervert in a journal, published under your auspices."

Cushing took pains, moreover, to secure from Mr. Blatchford and from Fletcher Webster denials covering every statement in the *Evening Post* libel. In writing to Blatchford, February 3, Cushing said:

"I have your favor of the 21st, for which I am grateful. I have also received a letter of the same substantial tenor from Mr. Webster. [Fletcher Webster]

I think it is time for a better understanding between him and me. Our *mis*understanding began in China, with my refusal to advance money to him. I had none to advance, either public money or my own. The appropriation was exhausted, and the government was indebted to me for a large sum. All my

private funds were used either in advances to the government or in long-previous loans to Mr. D. Webster. But this I could not explain to Mr. F. Webster, because Mr. D. W. had constantly and repeatedly requested me not to communicate on the subject with his son. This corresponds with what Mr. F. W. now writes to you in his letter of the 12th ult., that his father never communicated the fact to him.

Is it not clear that for fifteen years Mr. F. W. has done me in his heart, in his acts, and in conversation injustice from ignorance of the facts, first, of my serving his father with large sums of money from time to time and secondly, of my not speaking of it to him at the special request of his father?

I submit this for your consideration.

P. S. This is not the only case in which complaisance to friends in pecuniary matters has embittered my life. I am now struggling in constant distress to meet engagements thus forced upon me, with more or less of misconception and slander of my character as the incidental consequence.

There has not been a day for very many years when I could not have passed for a very generous fellow, if reinstated in the command of my own means. Pardon these personalities; they belong strictly to the subject."

So far as can be discovered from the Cushing papers, this is the complete story of his loans to Webster. As in so many similar cases, he received very little gratitude for his generosity, and, in the end, he had actually to endure calumny. But it was not in his nature to decline a request when he had the means of assisting a friend. This is not the only time in his life when his unselfishness was rewarded by misconception of his motives.

By 1848, Caleb Cushing was irrevocably joined with the Democrats and their fortunes. When Taylor was nominated for President by the Whigs, it was rumored that Cushing intended to take the stump for his old commander, but he soon repudiated the report. At the Democratic State Convention, held at Worcester in September, he was present as a delegate from Newbury-

port, and, as soon as an organization could be accomplished, the Chairman, Benjamin F. Hallet, invited him to address the gathering. Cushing improved the opportunity to say a good word for General Lewis Cass, the Democratic nominee for President. On the first ballot, Cushing received a decisive majority as candidate for Governor. The platform was devoted mainly to praise of the conduct of the Mexican War, and condemnation of the lack of patriotism shown by the Whigs.

During the campaign, Cushing showed himself to be a tireless and vigorous traveller, speaking in every section of the state and before large audiences. But the national election was evidently going decisively for Taylor, and the Whig triumph at the polls a week before the state elections were held was so overwhelming that the Cass Democrats were discouraged. In Massachusetts, furthermore, there was a third ticket, headed by Stephen C. Phillips, and representing the Van Buren and "Free Soil" element among the Democrats. The state election on November 13 gave Briggs 36,217; Phillips, 29,967; and Cushing, 16,917. There was, therefore, no choice by the people, and Briggs was later chosen Governor by legislative ballot. Caleb Cushing had had no illusions regarding his chances for the Governorship; and he could console himself by remembering that, since the formation of the Whig Party, Massachusetts had had a Democratic Governor only during the two terms when Marcus Morton had held that office, and that Governor Morton had been elected in 1838 by a majority of only one in the popular vote and in 1842 by a majority of one in the legislature.

In spite of his defeat, however, Cushing had established himself as Democratic leader in Massachusetts, and it was certain that, should his party ever come into power,

he would profit by its victory. The gossip of the street was busy finding a position for him worthy of his merits. There was a rumor in late November, 1848, that he had been appointed Collector of the Port of Boston, but it was without foundation. In December he went to Washington, and it was currently reported that Polk would appoint him a Commissioner in connection with Mexican Boundary dispute. He was, however, summoned home to Newburyport because of the critical condition of his father, who had grown steadily worse through the summer and autumn of 1848, and finally died on January 5, 1849.

The spring of 1849 was a restless period for Caleb Cushing. The settling of his father's estate took no small amount of time, and his own business affairs, as we have seen, were far from satisfactory. In April, he bought from Solomon Haskell a house and lot on High Street in Newburyport, which he proposed to furnish as his permanent residence. He read gloomily of the inauguration of Taylor, and wrote a friend that his political prospects had reached their nadir. There is abundant evidence that he was exceedingly melancholy, feeling that his prospects for the future offered hardly a gleam of hope. In June, when he went to Minnesota on an extended trip to look after the details of his western investments, it was reported in the newspapers that he and Robert Rantoul, Jr., — both depressed by Whig successes, — were about to emigrate to that territory for the purpose of engaging in the iron business. He talked frequently of going to California when the discovery of gold aroused the nation, and he actually fitted out several vessels for the voyage; but his engagements in the East proved too pressing. By the middle of August he was back in Boston, attending to legal matters for his clients,

and on September 1 he spoke at a Democratic rally in Springfield.

There was little for him to hope for, however, in political conditions in the autumn of 1849. The election of General Taylor to the Presidency had temporarily disrupted the Democratic Party in Massachusetts. George S. Boutwell, nominated as the Democratic candidate for Governor on a platform opposing slavery "in every form and color," was beaten from the start, and wrote Cushing frankly, in November, to say that Briggs would undoubtedly win once more.

In 1850, however, the situation underwent a marked change. Webster's famous Seventh of March Speech in favor of the Compromise Measures of Henry Clay aroused the Free Soilers to a point where they had but one ambition, — to wreak their vengeance on the Whig dynasty in Massachusetts and on the Whig Senator, Daniel Webster, who, they believed, had betrayed them.[1] Whittier's *Ichabod* expressed perfectly the feeling of Massachusetts abolitionists towards Webster:

> "So fallen! so lost! the light withdrawn
> Which once he wore!
> The glory from his gray hairs gone
> Forevermore!"

When Zachary Taylor died and Millard Fillmore succeeded to the Presidency in July, 1850, Webster accepted the position of Secretary of State, thus escaping the machinations of his Free Soil revilers. It happened, however, that Robert C. Winthrop, named

[1] The Free Soilers especially resented the approval of Webster of the Fugitive Slave Law, which was an essential part of the Clay's Compromise plan, without which no Southerner would have voted for it. Most Northern Democrats and Southern Whigs followed Webster in advocating the Compromise of 1850.

by Governor Briggs as Webster's successor in the Senate, was also a supporter of the Compromise, and considered himself the natural heir to the Websterian tradition. The Free Soilers in Massachusetts held a meeting in September, at the Adams House, in Boston, at which Henry Wilson[1] brought up the project of a possible coalition with the Democrats in the fall elections. Palfrey, Charles Francis Adams, Dana, and Phillips opposed the plan, and their objections were sufficient to block the earnest appeals of Charles Sumner and Wilson. No action was then taken which would commit the party. But Sumner and Wilson let it be generally known that they and their followers were not unwilling to join with the Democrats against the Whigs, on condition that the Free Soilers should be given a United States Senator. The movement for joint action thus begun was spontaneous and generally successful. In most of the districts Free Soilers and Democrats united on candidates for the legislature, with the result that they obtained a combined majority over the Whigs of ten in the Senate and fifty-four in the House. The election of Governor was carried into the legislature, there being no popular majority for any candidate.

To this plan for coalition, Caleb Cushing was bitterly opposed, and he fought it as vigorously as Palfrey and Adams, — though for a very different reason. With Rantoul and Banks, his fellow-Democrats, he had many a heated argument, but his protests were in vain. Cush-

[1] Henry Wilson (1812–1875), the "shoemaker of Natick," had been a supporter of Harrison in 1840, served several terms in both branches of the Massachusetts General Court, and became a founder of the Free Soil Party. He was President of the Massachusetts Senate in 1850 and 1851. He was elected a United States Senator in 1855, to succeed Edward Everett. He was elected Vice President of the United States in 1872, and died in office.

ing's motive for being unwilling to join with Sumner and Wilson can be readily explained. Like Webster, Cushing was convinced that the preservation of the Union should be the paramount aim of every American. Realizing the danger to the Union which was to be feared from the doctrines of the more fanatical abolitionists, he declined to be associated, under any circumstances, with them. He remembered that John Quincy Adams had declared that the annexation of Texas would entail the breaking up of the national compact. He had read Garrison's letter of January 15, 1850, in which the editor of the *Liberator* had said to a convention of abolitionists at Syracuse, New York, — "I am for the abolition of slavery, therefore for the dissolution of the Union." Whenever there was an attack on the Union, whether from Northerners or from Southerners, Caleb Cushing was prepared to repel it. On July 4, at the laying of the cornerstone of the Town Hall, in Newburyport, he had, as orator of the day, an opportunity to express his views:

"My friends, I repeat, there is solemn admonition, as well as proud recollection, for us all, in this anniversary. Are we, of the state of Massachusetts, against this Union, or for it? If the latter, as I firmly believe, then it becomes us to cease from all those acts which lead to disunion, as evidently as the flowing river does to the sea; it becomes us to desist from wanton vituperation of our fellow-citizens of other states, — to desist from disobedience to the organic law, — in a word, faithfully to observe and maintain the letter and the spirit of the Constitution.

The living men, who uttered the Declaration of Independence, have all passed away from time to eternity. But their spirits watch over us from the bright spheres to which they have ascended. We stand in their presence. They shall be our witnesses, as we solemnly renew on this day our vows of unalterable attachment to the Union, and declare that

'Nor steel nor poison,
Malice domestic, foreign levy, nothing'
shall prevail against it; and to this 'we pledge our lives, our fortunes, and our sacred honor,' so help us God!"

With the plan of combining the forces of the Democrats and Free Soilers then, Cushing would have nothing to do. But in spite of his disagreement with some of the leaders, he stood by the party. He wrote the call for the State Convention at Worcester, on August 20; he prepared the Address of the Democratic State Central Committee, sent out in printed form to every voter in Massachusetts, and declaring that "the constituent people of each of the new states or territories should be left to decide the question of slavery for themselves, in the exercise of their own popular sovereignty"; he sat as a delegate in the convention and supported Boutwell and Cushman, the regular nominees. He himself was elected from Newburyport to the General Court, where he was to be the storm-center during the session.

The crisis was not long postponed. As soon as the General Court convened in January, 1851, the matter of a coalition was the one topic of discussion. When the Democrats met to consider their plans, Cushing submitted the following resolutions:

"Whereas the Legislature is constituted of three parties, the Democratic, the Freesoil, and the Whig, neither of which possesses a majority of all the members either of the Senate or House of Representatives, so that without a cooperation of members of different parties the Government of the Commonwealth cannot be organized.

And whereas the Freesoil members of the Legislature in convention have through committees of conference, proposed to the Democratic members of the Legislature in convention, so to cooperate, on certain conditions, and not otherwise, one of which conditions is, that the Democratic and Freesoil parties

shall, by their combined votes, elect to the Senate of the United States, for the fractional term vacated by the resignation of Daniel Webster, and for the new term of six years, two candidates to be nominated hereafter by the Freesoil Party, surrendering thus the judgment of the Democratic members of the Legislature to the unlimited discretion of the Freesoil Party in the selection of such candidates.

And whereas it is understood and believed that the two candidates selected by the Freesoil Party, but whose names they decline to make known officially beforehand, are Stephen C. Phillips, of Salem, for the fractional term, and Charles Sumner, of Boston, for the full term.

Resolved, that we, the Democratic members of the Legislature, cannot, in our opinion, accede, without dishonorable sacrifice of principle, to the proposal of the Freesoil Convention."

He supported these in one of his ablest speeches, in which he contended, with justice, that, since the Democratic and Free Soil Parties had fundamentally different theories on government, and especially on the right attitude of Congress towards slavery, it would be both unwise and immoral for the Democrats to lend their organization for the benefit of such men as Sumner. He said substantially:

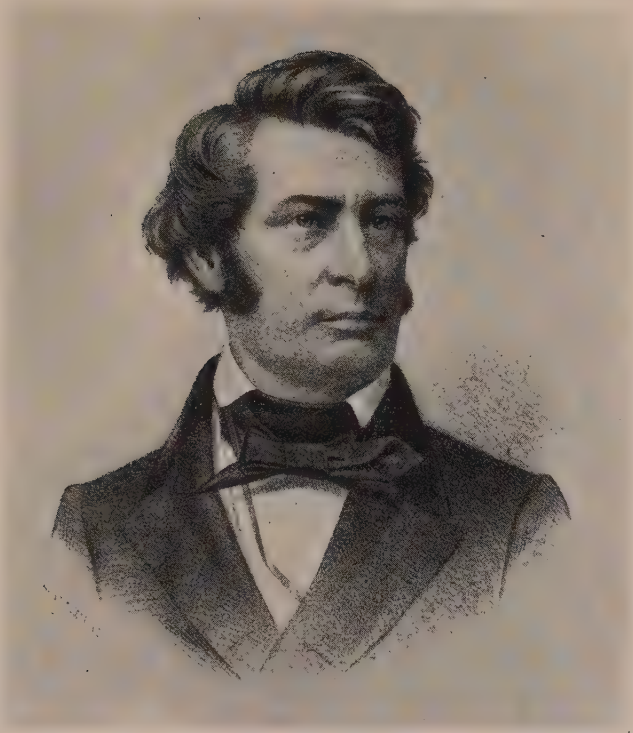
"If Democrats and Freesoilers can unite without a sacrifice of the principles of the Democratic Party, without denationalizing it, — the Democratic Party is augmented and strengthened. If otherwise, the Democratic Party is lost in the Freesoil Party."

It took some courage for Cushing to assume this position. He knew that a majority of the Democratic representatives favored the coalition. He was told that he was ruining his chances for office at the hands of the Democrats; yet he persisted in the course which to him appeared to be consistent and right. In the end, as he could have prophesied, his resolutions were rejected, and a working arrangment was formed between the two

parties. The Free Soilers were insistent on only one point, — that they should be allowed to name the United States Senator for the full term of six years, beginning March 4, 1851. The Democrats, for their share, were to receive full control of the State Government; and, as the first step in carrying out the plan, George S. Boutwell, their candidate, was elected Governor by the Legislature, receiving practically all the Democratic and Free Soil votes. Robert Rantoul, Jr., Cushing's intimate friend, was then chosen as United States Senator for the short term, in place of Webster.

So far, everything had gone smoothly. The Free Soilers now met in caucus and agreed on Charles Sumner as their candidate for the long term as Senator. Sumner's name was then submitted to a Democratic caucus, by which it was accepted by a vote of 58 to 27, — more than the two-thirds stipulated as necessary to approval. Caleb Cushing and a few of his adherents voted against Sumner in this caucus, on the ground that the latter represented in his ideals the most obnoxious tenets of abolitionism, with which, as we have seen, Cushing desired no compromise. Defeated in the caucus, Cushing, who was unpledged in any way, called together a group of his supporters and persuaded them not to vote, under any circumstances, for Sumner. The result was that when the roll was called on January 14, Cushing and his friends mustered 28 scattering votes, and Sumner, although receiving 186 to 167 for Winthrop (the Whig candidate), failed of the necessary majority.

Caleb Cushing had stirred up several violent political storms in his lifetime, but it may be doubted whether there had been any as turbulent as that which followed his action in voting against Sumner. The *Post* and the *Times*, Boston's leading Democratic newspapers, upheld



Charles Sumner

Cushing in what they called his "brave stand," and praised him when he called Sumner "a one-idea'd abolition agitator." The Whigs, in their turn, were jubilant at this evidence of dissension in the enemy's ranks. Meanwhile ballot after ballot was taken, — until Sumner, weary of the protracted struggle, would have withdrawn but for the pertinacity of his friends. Cushing, it appears, was quite willing to accept any Free Soiler except Sumner, whom he regarded as the most dangerous man in that party outside of Garrison. Indeed Cushing, in more than one conference, urged Henry Wilson to come forward as a compromise candidate, promising to give him his vote; but Wilson could not be induced to let his name be used. As the days went by, Sumner made a gradual gain; indeed on one dramatic occasion he was actually declared elected, only to have it discovered that the ballots had been wrongly counted. It was natural that the anger of the Free Soilers should increase with the passing weeks. The *Commonwealth*, the Free Soil newspaper, published an article of the most disgraceful kind. It was headed "GEN. CALEB CUSHING," and began as follows:

> "If this unprincipled politician does not spare his own personal feelings in carrying out his perfidy towards the Free Democracy, we see no reason why *we* should spare them. His only sister died on Monday morning, and was hurried into her grave by him at half past two P. M. on Tuesday, that he might be in his place to vote against Mr. Sumner, on Wednesday."

So unparalleled was this attack that practically every other paper in Boston condemned it for its vulgarity, and Cushing received sympathetic letters even from Free Soil opponents.

The deadlock was not destined to last interminably.

On April 24, a shrewd member moved that all ballots be enclosed in envelopes of uniform shape and size. Under this early form of the Australian system the twenty-sixth vote was taken, and it was found that Sumner had received 183, the precise number necessary to a choice. Henry Wilson intimates that it was Israel Haynes, of Sudbury, who changed his vote; but to this day no one really knows the secret of the member who made Charles Sumner's election possible.

Caleb Cushing has frequently been criticised for his action in opposing Sumner. It has been said by abolitionist sympathizers that it was his duty to support the man approved by the Democratic caucus, and that his failure to do so was an act of deliberate treachery. There is, however, not the slightest scrap of evidence to prove that Cushing had ever pledged himself to vote for the nominee of that caucus. On the contrary, he had repeatedly asserted, in private and in public, that he would under no circumstances aid in placing Sumner in the Senate. He was true to his honest convictions. He fought Sumner because he believed him to be hostile to the Union, — that one and indivisible Union which, under the tutelage of Daniel Webster, he had been taught must be preserved.

Although the session of the General Court in 1851 was so long occupied with settling the Senatorial contest, other business was also transacted. Among the important acts which Cushing advocated and pushed through was a bill providing that, in a second trial for the election of Congressmen, a plurality should decide the question. This measure prevented the recurrence of such a situation as that in Essex North in 1831–34, when Cushing was running for Congress and no candidate could secure a majority vote. Cushing was anxious to avert any simi-

lar deadlock in the Commonwealth of Massachusetts. He had been assigned to his former influential place as Chairman of the Committee on the Judiciary, to which was referred the petition of Eli Belknap and others "for the repeal of all laws in this Commonwealth enforcing the observance of a day of the week as the Sabbath or the Lord's Day." The anti-Sabbatarianism of which this petition was a phase was a movement initiated by a group of reformers, most of them also abolitionists, including Garrison, Theodore Parker, and others. In the report of the Committee, prepared by Cushing, it was recommended that the petition be rejected, mainly on the ground of expediency, because it was a question not of religious belief only, but also "of public order and public rights." In conclusion, however, Cushing took a higher view:

> "The Committee . . . cannot leave the subject without expressing their reverent respect for a social and religious institution, handed down to us by pious men from the time of the apostles, throughout all the long ages of the Christian Church, and still venerated in every part of Christendom."

Cushing also favored the act calling a constitutional convention in Massachusetts, for the purpose of revising the State Constitution, which had not been changed since 1819.

Under Cushing's leadership, the General Court passed a bill by which the overseers of Harvard College were made elective by the legislature. On January, 1852, he was chosen as one of the ten overseers, with Palfrey, Winthrop, Briggs, and others, most of them his political opponents. He served until 1856, taking an active part on committees, and showing himself thoroughly interested in the welfare of his *alma mater*. His bill was superseded in 1865 by a measure authorizing the gradu-

ates of the college to elect the overseers, a practice which has since been followed.

So busy was Cushing during the fall of 1850 and the winter of 1851 that he was compelled to decline many speaking engagements which he might otherwise have accepted. On September 26, 1850, he delivered an address at Salem, before the Essex Agricultural Society, in which he glorified husbandry and placed the foundation of all national prosperity in those who till the soil. In January, 1851, he was present at a Jackson Day supper held by the Democrats of East Boston, and responded to a toast by paying a tribute to the memory of General Jackson. In June, he gave the Commencement Address at Dartmouth College, taking as his theme the importance of the educated man in public life.

In April, 1851, Caleb Cushing was appointed as Chairman of a group of Newburyport citizens, instructed to secure a city charter from the General Court. Governor Boutwell, who was friendly to the project and ready to serve Cushing's wishes, approved the act making Newburyport a city. The government was promptly organized, Cushing being elected the first mayor by a vote of 964 to 88, — a sufficient and gratifying expression of confidence. In the midst of his other labors, he found time to suggest the devices on the Great Seal of the City. On Thanksgiving Day he distributed seven hundred pounds of poultry among the needy people of that place. Newburyport has never had a mayor who devoted himself more actively to its improvement.

Cushing prepared the report of the Democratic State Central Committee in 1851, in which he dwelt almost solely on the attitude of the Democratic Party towards the slavery issue. His conclusions were expressed in the following sentences:

"We reject and repel the doctrine that it is the duty of the citizens of Massachusetts to give themselves up to the agitation of the question of slavery abolition in the South. On the contrary, we insist that it is the duty of every good citizen and every good man to leave the subject of abolition of slavery where Washington and Madison, Morris, Hamilton, and Jay, the framers of the Constitution, placed it, namely, with the domestic legislation of each of the several states respectively concerned."

The spirit of this report was adverse to any union of any sort with abolitionists, and indicates that Cushing was still ready to fight for the doctrines which he had espoused in his battle against Sumner.

The Democratic State Convention, held at Worcester, continued the warfare between the two branches of the party, — one composed of coalitionists, who wished to carry on the arrangement of the year before with the Free Soilers; the other made up of "National Democrats," like Cushing, who believed in having nothing to do with abolitionists in any way. The struggle between the two factions was desperate. They agreed in renominating Boutwell and Cushman as candidates to head the state ticket; but, when it came to adopting resolutions, the "Hunkers" (as Cushing, Hallett, and their group were sometimes called) had a battle on their hands. The resolutions, as submitted by a committee of which Hallett was Chairman, declared the adherence of the Massachusetts Democracy to the doctrines of "non-intervention" in state affairs or institutions; condemned all agitation on the subject of slavery; approved of the Compromise Measures of 1850 as a whole; and endorsed the doctrines of the State Committee report as being those of the true

Democracy. Cushing and Benjamin F. Butler,[1] who was then just coming into prominence as a politician, spoke in favor of the resolutions, and several "progressives" opposed them; in the end, the resolutions were adopted as a whole, and Cushing emerged triumphant. The Democratic party in the state was committed thus to support of the Compromise of 1850, including the Fugitive Slave Law, and further coalition with the Free Soilers was decisively blocked.

In the autumn elections, Cushing absolutely refused to run for Representative to the General Court, being resolved to devote himself to his duties as Mayor of Newburyport. Boutwell was reelected as Governor, to Cushing's keen satisfaction, and it seemed as if Cushing's policy had justified itself. In April, 1852, a statute passed by the legislature gave an additional judge to the Supreme Judicial Court of Massachusetts, making the total number six instead of five; and Governor Boutwell appointed Caleb Cushing to the new seat, as Associate Justice, thus placing him on the bench which his father-in-law, Samuel S. Wilde, had occupied so acceptably for more than thirty-five years and from which he had but recently retired. Cushing, resigning as Mayor, took his new office in July. That he was well qualified for this position not even his most censorious critics could deny. But his hostile attitude towards Sumner had so aroused the anti-slavery men in Massachusetts that, as George F. Hoar points out in his *Autobiography*, Governor Boutwell earned their eternal enmity. That a Governor who owed his first term to a

[1] Benjamin F. Butler (1818–1893) studied law in Lowell, Massachusetts, and early joined the Democratic Party. In 1852 he took his seat in the Massachusetts General Court, and he attended every Democratic National Convention from 1848 to 1860. He was frequently a candidate for Congress, but never with any prospect of election.

coalition should reward the chief opponent of that coalition with a high judicial office was not at all to the liking of Henry Wilson and his friends.

But Boutwell was not actuated by political motives. It was his desire, as he openly avowed, to recognize distinguished legal attainment. And Caleb Cushing justified the Governor's choice. Confronted with a new responsibility, he prepared for his duties with his habitual diligence and thoroughness. In six weeks he read through the entire series of Massachusetts *Reports*, covering at that period some sixty octavo volumes of approximately 800 pages each. This remarkable feat enabled him later to astonish his colleagues with his knowledge of highly technical legal matters. His power of absorbing what he read, — of eviscerating it, so to speak, — was little short of marvellous.

Cushing had already earned a reputation at the Massachusetts bar for his logic and skill as a special pleader. Now, wearing the ermine, he was to display his industry and his fairness. Judge Shaw, the Chief Justice, who had protested against any enlargement of the court, said:

> "When he came upon the bench, we did not know what to do with him; when he left, we did not know what to do without him."

One of his associates mentions an occasion when, the full court having listened to the arguments in a difficult and complicated case, each judge was in dread lest the Chief Justice should allot to him the arduous task of drawing up the opinion. Cushing volunteered his services, and after three days, handed in the document as if the preparation of it had been a mere trivial matter of routine. When somebody expressed astonishment at the rapidity with which he had completed the assignment, he admitted

that he had not taken off his clothes since the material had been handed to him. The late Judge Bigelow once said of Cushing:

"When we have a question which hangs on a fixed law, demands a thorough research and a great knowledge of authority, we look to Mr. Cushing for its solution."

Nathan W. Hazen, in a memorial of Cushing written after his death, tells something of the latter's methods on the bench. He took the oath of office on June 25, 1852, appearing in his judicial robes for the first time at the Suffolk session of the court. His first real sitting, however, opened in Berkshire, in September. There was but one jury trial, — a question of realty law, involving opinions on some subjects not often brought up for discussion. In reporting the case, Judge Cushing abandoned the conventional procedure and gave his rulings in the first person, as "I was of opinion" or "I admitted the evidence" or "I instructed the jury." This innovation, while little more than an application of common-sense, seems to have impressed his colleagues as indicating an original attitude towards his work. His rulings in this case were presented in five points, to each of which an exception was taken; but Judge Holmes, to whom the appeal was made, sustained Cushing in each case. Mr. Hazen adds:

"Through the term he was patient and courteous, and exceedingly gracious to counsel. During the week he found leisure to be present at a trial before a justice of the peace. After it was concluded, he gave the magistrate advice as to some points of policy to be observed, and of the duties of his office generally, which was much valued by the recipient."

During his brief period of service on the bench, Judge Cushing was admired by all his colleagues for his faith-

fulness, his fairness, and his learning. It was said by those best acquainted with his mind that he was, perhaps, less competent to evolve new principles than he was to examine precedents, — in other words he was more of a legal scholar than a jurist. But no one, as far as can be ascertained, ever questioned his qualifications as a judge. It is probable that he was never in a more congenial atmosphere than when he was presiding over a court trial, and it would have been in many ways fortunate for him and his reputation if he had been content to remain there. But it was his destiny always to be unsatisfied, always to be searching for new worlds to conquer. It was this overmastering ambition which brought him once more into the maelstrom of politics in the presidential campaign of 1852.

In the autumn of 1851, at the Democratic District Convention, Cushing was elected unanimously as a delegate to the next National Convention; and from that moment he had a keen interest in picking the candidate for President. It took no very shrewd observer to see that the tide was swinging in favor of the Democrats, and that their standard-bearer, whoever he might be, would probably carry off the prize. Marcy, Buchanan, Cass, and Douglas were all aspirants for the nomination, and the average newspaper reader was sure, in April, 1852, that one of the four would be named. The first three of the group Cushing knew well, and there were qualities in each that he distrusted. Douglas was, to be sure, more promising; but Cushing, who preferred an Easterner, early resolved to play the rôle of Warwick and enter a favorite of his own in the great national sweepstakes.

Of the forces which, operating in obscurity and silence for several months, culminated by placing Franklin

Pierce,[1] of New Hampshire, in the White House, we have still much to learn. When he was actually President, there were not lacking men who were ready to claim the chief credit for his nomination. But whenever the scanty evidence is sifted, the name of Caleb Cushing invariably appears as one of the managers, — possibly the most active and dominating of them all, — who brought the movement to a successful conclusion.

It had been the original intention of the New England Democrats to bring forward Judge Levi Woodbury,[2] of

[1] Caleb Cushing had first become well acquainted with Pierce in the 24th Congress, of which they were both members. They were then of opposing political views, Pierce being a strong advocate of Jackson and Cushing an equally vigorous Whig. In 1837, Pierce was elected to the United States Senate, being the youngest member of the upper House, and remained there until 1842, when he resigned in order to practice law in Concord. He declined the post of Attorney General offered him by Polk, and also a Democratic nomination for Governor. Like Cushing, he supported the annexation of Texas, and like him, also, he enlisted in a volunteer regiment as soon as war with Mexico broke out. Pierce became Colonel of the ninth regiment, but was soon commissioned as Brigadier General. More fortunate than Cushing, he saw active service, and was severely injured by a fall from a horse. After the close of the war, he returned to Concord, where he followed his profession. His availability in 1852 was partly due to the fact that, because of his ten years away from Washington politics, he had made no enemies in the recent controversies.

[2] Levi Woodbury (1789–1851), a Dartmouth graduate in the class of 1809, gained a reputation in New Hampshire as Governor and Speaker of the House of Representatives. In 1825 he was elected United States Senator, and, at the close of his term in 1831, was appointed Secretary of the Navy, by Jackson. In 1834 he was transferred to the Treasury Department, in which office he remained until the close of Van Buren's administration. In 1841, he was again elected to the Senate, and in 1845 Polk appointed him as a Justice of the Supreme Court. He was a leader of the Democratic Party in New Hampshire. Personally he was a man of dignified appearance and high character, who, but for his death, might well have become President.

New Hampshire, as their candidate, but his death in December, 1851, came just as their plans were maturing. The leaders were then divided as to their best policy. Some favored General Sam Houston; others were in favor of William Orlando Butler,[1] the Kentucky veteran of two wars. There seems to have been a general agreement early in 1852 that Pierce would be a good man for Vice President, but no one mentioned him openly for the higher office.

Meanwhile General Gideon J. Pillow, of Mexican War fame, was doing some scheming of his own with a little group of his former military associates. In August, 1851, accompanied by Clingman, of North Carolina, and Quitman and Jefferson Davis, of Mississippi, — all veterans of the Mexican War, — Pillow came to New England, ostensibly to seek refuge in the cool summer resorts, but partly also to discuss the political situation. In Boston they met Cushing, who took them with him for a few days to his home in Newburyport. They invited Pierce to join them, and the party of generals, now complete, made a tour of some of the mountain and beach hotels, spending a week with Pierce at his estate on the ocean at Little Boar's Head. They then separated, but met again with Pierce at Concord in October, as the vacation closed. In this series of conferences, the Mexican War leaders evidently decided to work together at the convention in the following June; but it is quite evident from Cushing's correspondence that neither he nor the others had yet fully determined what candidate they would support for President. Certainly they had not decided on Pierce,

[1] William Orlando Butler (1791–1880) fought in both the War of 1812 and the Mexican War, being severely wounded in action in 1847. He was a Congressman from Kentucky for two terms (1843–45), and in 1848 he ran for the Vice Presidency on the Democratic ticket with Lewis Cass, but was defeated.

who was not himself immediately responsive to the suggestion that he should be run for Vice President. On one subject only had the group come to a definite agreement, — that the Democratic Party should be kept aloof from any Free Soil contamination and should name as a candidate only a man whose first object would be the support of the Compromise of 1850 and the preservation of the Union.

In New York State, also, intrigues were being carried on, especially by the supporters of William L. Marcy,[1] who had a beautifully constructed and artfully manipulated political machine, with active agents in Washington, among them two men named Stryker and Angel, who reported regularly to their chief. The Marcy campaign was skilfully directed; but unfortunately the New York Democracy was split into two hostile sections, one of which, headed by Daniel S. Dickinson,[2] was irrevocably opposed to Marcy's ambitions.

Such, then, was the state of affairs in the spring of 1852. Caleb Cushing himself was still irresolute, but keeping a watchful eye on the progress of events. From Captain Paul R. George, with whom he was in regular correspondence, he learned much. On January 25, 1852, George wrote from Washington:

[1] William Learned Marcy (1786–1857), a Brown graduate (1808), studied law in Troy, New York, fought in the war of 1812, was elected United States Senator but resigned in order to become Governor of the state, in which office he served for three terms. In 1845 he was appointed Secretary of War by Polk. Since 1849 he had been living in comparative retirement at Albany.

[2] Daniel Stevens Dickinson (1800–66), studied law and settled in Binghamton, New York, from which place he was elected to the State Senate. He was later Lieutenant Governor and United States Senator (1844–51), being Chairman of the Finance Committee. Dickinson was a leader of the "Hards" or "Hunkers" in New York State, who believed, like Caleb Cushing, that there should be no coalition with the Free Soil Party.

"Just now politics are very much mixed. It is thought here neither Cass nor Buchanan will be the man, that Butler, Marcy, or Douglas will one of them finally win, Butler rather the strongest just now, yet many obstacles are presented in his way. Within a few days Marcy has been more sincerely spoken of than before. I should doubt for political objects if your profitable time to come was at present. A new member from Kentucky seems to be a formidable man as Butler's confidant; his name is John C. Breckinridge. I have seen and had a long talk with him, and in it mentioned Gen. Cushing was the strong man of New England that all Butler's friends counted on. Blair is a strong man in Butler's circle."

On February 9, George wrote once more from Washington:

"Politics are calm, but preparing to heat up by and by. Marcy is a strong man & not unlikely to win. It would be well you write him. I think it clear Butler, Marcy, or Douglas, — one of these three, — will be the man."

On March 25, Cushing and George had a conference at the Astor House in New York City, with Stryker and J. Addison Thomas, the latter of whom at once sent his account of the interview to Marcy at Albany:

"He (Cushing) at first said in reply to the question 'What is Mass. going to do?' that she would be disposed to place herself along with New York provided N. Y. returned to her senses. Then he made quite a speech on the fanatical course of N. Y. in embracing all the *isms* of the day. When he had finished, I gave a brief history of the restoration of harmony in our party, and your position in the state and what we could do with you as our candidate, and said further, that he had just conceded that none of the other candidates could carry N. Y., and that you had reconstructed the party in the state under its ancient principles. You had accomplished what none of the other candidates could do, and there could therefore be no dissatisfaction from your having interfered with them. Besides, that the ability to carry the electoral vote of this state was an

element of strength possessed by no other candidate. After some remarks from Stryker confirming and explaining my own more at length, Cushing said, 'I can't commit myself without consulting my friends, but I can say that all my tendencies are toward Gov. Marcy.' We left him with the impression that he is more favorable to you than any one else."

Still uncommitted, Cushing went on to Washington, where he found Edmund Burke,[1] whom he had known in his Congressional days and with whom he had made a careful analysis of conditions. It seemed to them that neither Marcy nor Dickinson could carry New York State; and, as they went over the list of eminent Democrats, the name of Franklin Pierce seemed to them irresistible. So impressed were they with the importance of coming to a decision at once that they prepared a letter to Pierce, which Burke signed and sent off on April 9, asking whether the New Hampshire statesman would allow himself to be brought forward as a compromise candidate. They then sat back to await his decision. Two days later General Pillow reached Washington in response to an appeal from Cushing, and gave his full approval to what had been done. Everybody was pleased when a letter arrived from Pierce, dated April 13, placing himself, as the saying goes, "in the hands of his friends." Pierce was honestly reluctant to go through a campaign for the Presidency, but he could not deny the potency of the arguments which Cushing had used.

It took now but a few hours to agree on the ticket of

[1] Edmund Burke (1809–82) had been in Congress as a Representative from New Hampshire from 1839 until 1845, and Caleb Cushing had known him well. He had been made Commissioner of Patents by Polk, and had then returned to practice law in Newport, New Hampshire. In 1852, he was writing for the Washington *Union*, and was well known as a practical politician and newspaper man.

Pierce and Pillow, — and the Mexican War generals were ready for action. After talking over a list of the men whom they should take into their confidence, Cushing and Pillow went north, stopping for a few days in New York, calling on General Thomas L. Seymour in Hartford, and then going to Boston, where they had an interview with Governor George S. Boutwell. Boutwell, in his *Sixty Years in Public Affairs*, makes the following statement regarding this conference:

"The nomination of Pierce was prompted by the officers who had served with him in Mexico. Previous to the Democratic Convention in 1852, Gideon J. Pillow came to Boston, and he and General Cushing visited Pierce in New Hampshire. They also called on me and laid open a scheme in which they invited me to take a part. It was, in fact, a project for an organization inside the Democratic Party, by which the action of the party should be controlled. First, a central organization composed of a few men self-constituted; next, a small number of assistants in each State who were to organize through confidential agencies in the counties, cities, and larger towns. All these agencies, through newspapers and by other expedient means, would be able, it was thought, to control the party nominations and the party policy. I had then declined a renomination to the office of Governor, and I was able to say with truth that I intended to retire from active participation in politics. I declined to consider the subject further. Whether or not the scheme was matured, I have no knowledge."

Others, less reluctant than Boutwell, were apprised of the scheme and agreed to lend their aid. Among them were Charles G. Atherton,[1] Senator James W. Bradbury, of Maine (one of Pierce's classmates at Bowdoin College), and Benjamin F. Butler, of Lowell. Pillow and

[1] Charles Gordon Atherton (1804–53) was in Congress from 1837 until 1843, and became notorious as the author of the "Atherton gag resolution" of 1838. He also had been a Senator from New Hampshire from 1843 until 1849.

Cushing then went on to Concord, where they explained to Pierce just what had been accomplished. Pillow then left for the South, to spread Pierce propaganda among the delegates to the national convention; while Cushing remained in Boston perfecting the plan already prepared.

It is extraordinary that none of these arrangements leaked out at the time, for Cushing and Pillow made no attempt to conceal their visit to Concord. But the name of Franklin Pierce cannot be found mentioned in any contemporary newspaper as a possible or probable candidate. Paul R. George wrote from Contoocook, on May 17:

> "I have no news of political interest. Gen. Pierce & friends are somewhat active. Concord people liked you better than Gen. Pillow; I mean the people talking about the visit."

This is almost the only reference in Cushing's correspondence to Pierce's candidacy. Meanwhile the other contestants were exceedingly busy. Marcy was eager for the nomination and had covered the ground thoroughly; and there is not the slightest mention in his letters of Franklin Pierce as a rival at Baltimore. On May 21, Marcy wrote of his own nomination and election as "an extremely probable event." On that very day, however, Duff Green told Marcy that the "managers" were evidently trending towards Buchanan. J. A. Thomas sent word on May 21, from Baltimore, — "The struggle will be between you and Douglas, beyond question." To none of these shrewd political strategists did Pierce's name have any especial significance on the eve of the convention. Nevertheless, when it opened on June 1, the Pierce men knew exactly what was expected of them, and were ready to put their machine into operation.

It has been asserted by those who were in a position to

know that a program for the convention was practically laid out beforehand by the Pierce managers. Henry P. Rolfe, a law student in 1852 in Pierce's office in Concord, is reported to have made the following statement on the day when the New Hampshire delegates left for Baltimore:[1]

"They [the Mexican War generals] fixed up all the arrangements to make Frank Pierce the Democratic nominee for President. All of them but Pierce will be in the Convention. They do not all favor the same one of the big three, — Marcy, Cass, and Buchanan, — first. They all speak well of all three. They will conspicuously try to secure two-thirds of the Convention for one or the other of the three, but their influence, though strong enough to give one after the other a majority, will somehow always fail to bring together two-thirds for either. When the Convention begins to get tired and delegates are asking who, then, can we nominate, and the names are getting mentioned, then Gen'l —— is to nominate Gen'l F. Pierce and Gen'l —— is to second the nomination. Other generals and others besides the generals will join them, and Pierce will be the nominee."

This prophecy, if accurately quoted, proved to be extraordinarily close to the facts. Benjamin F. Hallett,[2] Chairman of the National Democratic Committee, called the delegates to order. Caleb Cushing was placed as the representative from Massachusetts on the committee to nominate officers, and John W. Davis, of Indiana, was

[1] See article by S. P. Jennison, of Covina, California, in the Minneapolis *Journal*, December 16, 1903.

[2] Benjamin F. Hallett (1797–1862) was a well-known Democratic politician, who had begun by being an Antimason and an editor of the Antimason organ, the Boston *Advocate*. As a newspaper man, he was feared for his bold tongue and daring tactics. For several years he was Chairman of the Democratic National Committee, and he was appointed a United States District Attorney by Pierce. Cushing and he, although both Democrats, seem never to have been intimate, and there were periods when they were enemies.

speedily chosen as Permanent Chairman. The delegates were evidently fixed in their resolve to have nothing to do with Free Soilers, for Robert Rantoul, Jr., who had favored the coalition in Massachusetts, was rejected, and his seat was given to a more conservative gentleman named Lord. Practically every candidate of any prominence had replied, in answer to a circular letter, that he would maintain and enforce all the measures in the Compromise of 1850, including the Fugitive Slave Law. Seldom have the tenets of a party been so unanimously approved by its members.

For two days little of importance was accomplished, except the confirmation of the two-thirds rule in nominating candidates. One by one the names of the "big four" were presented, with the florid eloquence which invariably characterizes speeches on such occasions, — each aspirant a "peerless leader," "a favorite of the people," and a man to whose record the party and the country could "point with pride." When the first ballot was taken, Cass, with 116 votes, led the procession, followed in order by Buchanan, Marcy, Douglas, and some of the less conspicuous men. The name of Franklin Pierce did not appear. The first show of strength had turned out just as Cushing predicted, — with no one of the leaders able to control the 188 votes required for a choice. The quarrel between Marcy and Dickinson had split the New York delegation, and Marcy was left only partly supported by his own state. The Massachusetts delegation, it may be said, gave, on the first ballot, Cass 9, Marcy 2, Douglas 1, and Houston 1, — Cushing himself voting for Marcy. Ballot after ballot was taken in the next two days, with results always varying slightly but not sufficiently to place any one decisively ahead.

Meanwhile the Pierce plot was thickening. On the

third day, Cushing and French (formerly the Clerk of the House of Representatives) called on Henry A. Wise, of Virginia, who was influential with the delegation from that state, and suggested that the time would soon be ripe for presenting Pierce's name.[1] The Virginia delegation, however, remained a unit for Buchanan as long as there seemed to be a reasonable hope of nominating him. On Friday night, a committee from six Buchanan states, — Virginia, Pennsylvania, North Carolina, Georgia, Alabama, and Mississippi, — met in conference, and it was quite apparent that both Virginia and North Carolina would insist on trying some other name before they made another rally on Buchanan. Then Wise made the subtle suggestion that the six states, with their large block of votes, should turn their strength in turn to Pierce, Marcy, and Butler, and that, if any one of these men was nominated, they should stand by him; if no one of them was successful, they should return to Buchanan and fight for him to the finish.

The introduction of Pierce's name, thus so cleverly accomplished, was due evidently to the fact that Cushing had already talked the matter over with Wise. There was, however, an unexpected element which entered into the arrangement at the last minute and which might easily have upset all calculations. A majority of the Virginia delegation, strongly anti-Marcy, insisted on giving a complimentary vote on one ballot to Daniel S. Dickinson, Marcy's ancient enemy. Had Dickinson permitted this, Pierce's chances might have been infinitesimal. As it was, Dickinson rose, and, in a speech of real eloquence, declined the honor, saying that, if he allowed his name to be mentioned, he should be untrue to his

[1] See Wise's letter to Pierce, June 22, 1852, quoted in *Recollections of Thirteen Presidents*, by John S. Wise (1906).

honored friend, Lewis Cass, whom he believed to be the ideal candidate. The movement was dramatic and to some extent successful, for Cass, on the thirty-fifth trial, received the largest vote yet given; but on the same ballot, Virginia, carrying out the policy adopted in conference, cast fifteen votes for Franklin Pierce. On the next ballot, he was given in addition eight from Maine, five from New Hampshire, and two from Tennessee. Massachusetts, on the same ballot, gave Cass six, Marcy six, and Douglas one, — Cushing having seen that the psychological moment had not yet arrived for making a swing in force towards Pierce.

By this time, the convention had been stirred to a high pitch of excitement. The heat was intense, and the delegates without collars, wilted in body and spirits. The long strain was obviously telling on their nerves, and the time was ripe for a break. It was now or never, for it had been intimated on the floor of the hall that it might be wise to dissolve the gathering without coming to a choice. It was then that General Cushing displayed the finesse of which he was capable. Moving here and there among the wavering delegates, he spread the impression that Pierce was a man who had no foes, a man of whom no one, even in the midst of such fierce rivalry, could possibly be envious. What was needed, he suggested, was a compromise candidate, — one who, though sound on the tenets of true Democracy, would antagonize nobody. Cushing's arguments were convincing, especially to delegates who were weary and worn, and who wanted above everything else to get something done and go home.

As the balloting went on, Pierce occasionally gained a few votes, and, on the forty-eighth trial, stood third on the list, with 55 votes to Cass's 73 and Marcy's 90. On

Franklin Pierce

Saturday morning, as the reading of states for the forty-ninth ballot began, the stampede which Cushing had been preparing actually occurred. Pennsylvania, the rock-ribbed Buchanan state, came forward for Pierce. Others followed, until, in one of those strange bursts of mob mania which sometimes explode when tension runs high, everybody seemed simultaneously to wish to cast his vote for the winning candidate. The hall was a shouting mass of humanity, and, when the result was announced, it was found that Pierce had received 282 out of 288 votes cast. To the general public, he seemed like a far more mysterious "dark horse" than Polk had been in 1844. In reality, he was nominated by a plan more successful in its immediate results than any similar scheme in our political history.

Pierce himself was a consummate actor and did his part in maintaining the illusion of spontaneity. We are told that, when the convention met, he went unobserved to Boston to await results, keeping in touch with Cushing by telegraph. He displayed some interest in the early voting, but when his name was presented, he was no longer to be found. On Saturday, when the news of his nomination arrived, messengers were despatched to his hotel, but he had disappeared. At length somebody remembered at the American House that Pierce had mentioned that he was going to Mount Auburn. A party of friends then set out in search of him. They discovered him quietly reading a novel, and, when he was informed of the action of the convention, he gasped, "My God, gentlemen, you could not have told a more astonished man!"

As Caleb Cushing journeyed back to New England, with Captain George by his side, he expressed himself as being very much contented. As he expected, every-

body was busy praising the candidate. On June 5 Marcy wrote a friend:

> "I have this moment heard of the nomination of Pierce, and, strange as you may think it, I really rejoice at it. Though towards the close of the ballotings I run up, I did not for a moment take the slightest hope that I could go through. Pierce is a fine fellow, — a good friend of mine, as I flatter myself, and what is perhaps of more importance, more sure of carrying this state than any other of the candidates save one, and probably more popular in other districts."

Douglas and Buchanan had hastened to pledge their support to Pierce and King. There was no Democrat who did not have faith in the ticket. The platform, too, was no less agreeable, for it insisted on the "finality" of the compromise measures of 1850, and deplored any agitation of the slavery question. To this statement of Democratic principles, Pierce found it easy to accede, for it was his known political creed. In 1852, then, the Democratic Party, in its platform and its candidate, was the party which promised rest and peace to a tired country. Under any one except Pierce the union of all the diverse elements would have been difficult; but with him as a leader, the problem was simple. Caleb Cushing had ensured the success of his party at the polls.

In late May, just before leaving for the Convention, Cushing had received his appointment as Judge. He now returned to find himself burdened with the task of preparing for his new duties. On Monday, June 8, he allowed himself the dissipation of attending the anniversary of the Ancient and Honorable Artillery Company of Boston, of which he was Commander. The program for the day was long; there were innumerable toasts to be drunk and countless speeches to be made; but somehow Cushing, who acted as toastmaster, survived

the festivities, and was on his way the following morning to Newburyport for a period of study and seclusion. He declined all invitations for the next four weeks, and did not even attend the big Democratic Ratification meeting in Faneuil Hall on Bunker Hill Day. Not until the Harvard Commencement near the end of July did he appear once more in public. At Cambridge, he was given an honorary degree of LL.D., with Guizot, de Toqueville, Francis Wayland, and Judge Thomas Bell Monroe. It was a fitting and timely recognition of his achievements by his *alma mater*.

The routine duties of his judicial position would have prevented Caleb Cushing from participating actively in the campaign of 1852. But he was not really needed. The canvass was apathetic. The Whig candidate, General Winfield Scott, who had been nominated in late June, was not a man who inspired confidence. He talked a great deal, and expounded his good intentions with much vigor; but his speches won him no votes. Pierce, on the contrary, said very little, but conducted himself with dignity, even abandoning the convivial habits which had been the concern of his friends. Webster's supporters, who had resented the nomination of Scott, showed no enthusiasm for the Whig ticket. The impression spread that Pierce was an eminently "safe" candidate, who would ensure the stability of our institutions. No one was surprised when, in the November elections, Scott secured only 42 votes to Pierce's 254. The Whig Party was almost obliterated. Its two greatest leaders, Clay and Webster, had died during the course of the campaign, and there was no one to take their places. The Free Soil Party, too, seemed to be growing feebler, and its candidate, John P. Hale, did not receive one electoral

vote. Seldom has a party been more completely triumphant than was the Democracy in 1852.

To this result Caleb Cushing had contributed very materially, and sagacious observers expected that he would be one of the new President's chief advisers. As soon as the election was over, Pierce began to consider the matter of the cabinet, and, judging from an editorial in the New Hampshire *Patriot* for December 8, had made up his mind to have every branch of the party represented. In discussing his problems, Pierce had many counsellors, including Charles G. Atherton, Congressman Charles H. Peaslee, and Sidney Webster, who was to be his private secretary; but he relied greatly on what Caleb Cushing had to say. During December, Pierce came frequently to Boston, and, at the home of his wife's uncle, Amos Lawrence, or at hotels, conferred privately with his chosen friends. A very important meeting was held on Christmas day, in the Tremont House, where Atherton, Nicholson (editor of the Nashville *Union*), R. M. T. Hunter,[1] and Caleb Cushing gathered in secret conclave, at which Nicholson, Hunter, and Cushing were told that they were to be offered departments. Nicholson eventually declined any office. Hunter also, after considering the proposal carefully, wrote that his family were much opposed to his taking any place in the cabinet and that he had determined, therefore, to remain in the Senate. Buchanan intimated that Hunter's declination was due to a desire not to injure his prospects for the

[1] Robert Mercer Taliaferro Hunter (1809–87), of Virginia, was a close friend of Caleb Cushing, who had known him in Congress. Hunter was a member of the 25th, 26th, 27th, and 29th Congress, and was Speaker for one term. From 1847 until the Civil War he was a United States Senator from Virginia. Hunter was a State Rights Democrat of the school of John Tyler. He was later Secretary of State in the Southern Confederacy.

Presidency in 1856. As for Cushing, he was not yet decided whether to accept or not.

While pondering on his problems, he returned to Newburyport to secure some privacy. In early January, however, at the very moment when his wisdom would have been most helpful to Pierce, he was taken seriously ill. He had undoubtedly been overworking on the bench, and the unusual excitement of his recent conferences had left him debilitated. He remarked one afternoon to a judicial associate that his head was crammed with wool fibres and the buzz of witnesses filled his ears. On the next morning he had to be carried home, where his case was diagnosed as scarlet fever. Whatever his disease was, it kept him in bed for several weeks at a time when Pierce was forming his cabinet. By the time Cushing was thoroughly convalescent, the inauguration was at hand, and Pierce had reached his final decisions.[1]

Wretched though he was, Cushing could catch the echoes of contemporary gossip. On January 5, 1853, Paul R. George wrote him from Concord:

"I learn, so that I believe it, that Hunter was urged & finally consented to go in Sec. of State, with Dix of N. Y., Treasury, Davis Sec. of War, Medary of Ohio, P. O., McClelland Interior, a Pennsylvania man Att'y Gen'l. If Hunter should suggest you for Navy, I have no doubt it would be accepted by Pierce. Pierce is afraid Hunter will not accept. If he does not, it will cause a new cast. I think he will accept. John & Atherton & Webster are at Washington now. I will be in Boston to go to New York soon & see you then. Meantime I think you owe it to Gwin to write him this present state

[1] Cushing was most unfortunate in his illnesses. In a similar situation, when Harrison was forming his cabinet in 1841, he had been incapacitated, and at a period when it seemed probable that he would be given a department. Now twenty years later, the same situation was repeated, except that his place in the cabinet was assured.

of facts. Hunter is the man for him to see. He can fix it & no one else. Pierce wants him very much. Will he want you in Navy? Let Gwin ask him. I think he will as he thinks you will be his friend. There is no political doubt you better go in with Hunter if called."

Cushing, in his sick-room, was quite ready to listen to the advice of the very practical and worldly George, especially since he himself knew the real facts far better. He was well aware that William L. Marcy, of New York, had an interview with Pierce on November 11, in the course of which the latter had expressed his regret that Marcy's enemies in his state would make a cabinet appointment for him unwise. Cushing had been told by Pierce, moreover, that John A. Dix [1] was to be Secretary of State. Indeed Pierce had sent for Dix not long after the result of the election was certain, and had offered him that department. Dix left Concord with a clear understanding on the subject; but as soon as Pierce's "Hunker" and Southern friends caught wind of the appointment, they protested vigorously, Dickinson, Atchison, Wise, and Mason, as well as Caleb Cushing, being among them. Dix was a notorious "Barnburner," who had decided Free Soil sympathies and was not persona grata to Marcy. Pierce was warned by his advisers that, if he established Dix in the State Department, his cabinet would never be a unit. Much embarrassed, Pierce called Dix to Concord and put the situation frankly before him. Dix then courteously withdrew his name, leaving Pierce free to

[1] John A. Dix (1798–1879), born in Boscawen, New Hampshire, settled as a lawyer in Cooperstown, New York, where he held some minor posts in the Democratic Party and was finally, in 1845, chosen to the United States Senate. In 1848 he ran unsuccessfully as the Free Soil candidate for Governor of New York. The most brilliant part of his career came after 1860, when he was Secretary of the Treasury, Minister to France, and Governor of New York.

make another selection. The latter, believing it desirable to include some New York Democrat in the cabinet group, finally offered the place to Marcy, who accepted it at once.

Pierce's deliberations on these important questions were sadly interrupted by a tragedy in his household, — the death of his youngest and last surviving son, Benjamin, a boy of thirteen, who was instantly killed in a railroad accident two miles beyond Andover, Massachusetts, on the way from Boston to Concord. His father and mother were on the train at the time, and the shock to them was very great. But Pierce, in the midst of this overwhelming sorrow, was compelled to return to his cabinet-making before more than two weeks had gone by, and to listen to the importunities of a multitude of claimants, whom he was too polite not to hear.

The newspapers were, of course, full of gossip, usually incorrect. The New York *Herald*, on December 4, 1852, intimated that Buchanan would be Secretary of State, with Henry A. Wise as Attorney General. The New York *Tribune* of December 27, announced, with more truth, that Marcy, Hunter, and Cushing had been decided upon, saying of the last named gentleman:

"Mr. Cushing is the foremost man, intellectually, in the Pierce ranks in New England. He has industry, force, clearness of thought, perspicacity of style, and polish of expression. Mr. Pierce needs such a man in the administration, in order to go easily and successfully to the close of his term. He wants, also, a confidant upon whose judgment and friendship he can rely, as well as one whose ability is equal to any emergency that is likely to arise during his career. Another condition which is essential to his success is to have a man who will not be plotting for the election of himself to the Presidency. Mr. Cushing is such a man. He is a personal friend of the President, enjoying intimate and confidential relations with

him, possessing congenial tastes and habits, and, though an inveterate plotter and contriver of schemes for his own advancement, he will be precluded from indulging his propensities in this particular, for he belongs to a quarter of the country that will neither claim nor get a President, after General Pierce, during the present generation."

The New York *Herald,* on February 19, stated with some positiveness that Caleb Cushing was to be Secretary of State, with Hunter in the Treasury, Davis in the War Department, and Campbell in the Navy. The *Herald* improved the opportunity to give its readers, in an editorial, an exposition of Cushing's views:

"With respect to his political proclivities, we apprehend he is identified with the progressive school of 'young America,' though not to the extreme filibustering propensities of the *Democratic Review.* He is not an 'old fogy,' we are quite sure, whatever that dreadful term may imply. He is not afraid of Cuba, and not in the least fastidious about proclaiming the Monroe Doctrine. He is a believer in the good old Roman practice of moving the God Terminus a little further out, instead of restricting our boundaries by a Chinese wall of conservatism. He is a firm disciple of Galileo, and believes that the world moves, while it seems to be standing still. He thinks, with Bishop Berkeley, that the 'star of empire' is tending westward; and that there is something in the maxim of that hard old Scotchman that 'Commerce is King.' The atmosphere of the Democratic Party has expanded his views on the tariff question into the conviction that the policy of Robert J. Walker and the policy of Sir Robert Peel have done more for our commerce and that of the world than all the high protective tariffs of the last quarter of a century. This is the sort of man we understand General Cushing to be; and whether finally appointed Premier or not, this brief sketch of his public career may be useful to all those politicians ignorant of the peculiar qualifications upon which his friends are so sanguine of his assured success."

It is impossible to ascertain the precise date on which Caleb Cushing accepted the post of Attorney General.

In February, C. Edward Lester, the American correspondent of the London *Times*, went to Concord to get the names of the cabinet officers in advance, if possible, from Pierce. After his interview, which appears to have been successful beyond his expectations, he took the train for Boston and tried to find Cushing, who was, of course, still confined to his house in Newburyport. Lester then wrote him, saying that he had good reasons for believing that Cushing would not only enter the cabinet but would be the leading spirit in it, and asking for a sketch of Cushing's career. The latter answered on February 19, in a dictated letter:

"I fully agree with you as to the patriotic purposes and brilliant prospects with which General Pierce enters upon the Presidency. If there should be occasion for it, I will send you the data for which you ask, and for the suggestion of which I am highly indebted to you. I started, as you may perhaps know, from the same point, so far as regards education, atmosphere, and mental culture, with Mr. Everett and Mr. Bancroft. Their lives have been of a more learned and meditative cast than mine, and mine of a more adventurous and active complexion than theirs. In the details of each, correspondences and contrasts occur, which may facilitate what you propose in suggestiveness to the minds of Englishmen."

Six days later, on February 25, the New York *Herald* was able to announce the full cabinet list as it was later to be made up; and the name of Caleb Cushing was included, as Attorney General of the United States.

CHAPTER THIRTEEN

THE ATTORNEY GENERAL

"We often fail by searching far and wide
For what lies close at hand. To serve our turn
We ask fair wind and favorable tide.
From the dead Danish sculptor let us learn
To make Occasion, not to be denied:
Against the sheer, precipitous mountain-side
Thorwaldsen carved his Lion at Lucerne."

Franklin Pierce, of New Hampshire, was personally one of the most magnetic of our presidents. Of winning manners and unfailing courtesy, with few enemies and a host of friends, he was

"A gentleman from sole to crown
Clean-favored, and imperially slim."

Indeed his very affability was almost a weakness, for he hated to offend any one or to arouse an animosity. Convivial by disposition, he had the misfortune to be known as "a prince of good fellows." He had been brought up in a Democratic household and had never shifted his allegiance, having been successively an adherent of Jackson, of Van Buren, and of Polk, and a strong supporter of the compromise measures of 1850. He had approved the annexation of Texas, had shouted for "the whole of Oregon or none," and had avowed his expectation that Cuba would some day be ours. It is a mistake to regard him as without convictions, for he had never vacillated or evaded an issue. Nor had he ever selfishly sought his own advancement, and it was well known that he had de-

clined several important positions in his own state and the nation. In short, his respectability as statesman, soldier, and husband and father was unquestioned. But although he was incapable of anything mean or treacherous, he was liable to be guided by more positive minds than his own. Recognized as "a Northern man with Southern principles," he was faithful to his ideals, but he lacked robustness of character and was too often willing to let others make his decisions. When once embarked on a policy, however, he could be firm as that Mount Monadnock within sight of which he was born. He has been described by one critic as an "amiable mediocrity," and his political career justifies the phrase.[1] Such was the leader whom Caleb Cushing was destined to serve for the next four years.

Still much depressed over the loss of his son and obviously very pale and tired, Pierce arrived in Washington on February 21, accompanied by his secretary, Sidney Webster. But for his bereavement, he might well have felt elated. At the early age of forty-eight, he was entering upon the honors of the Presidency with a united party at his back, controlling both branches of Congress and pledged not to reopen any of the more dangerous wounds from which the country had suffered. Never had the Democracy a richer opportunity or a more secure tenure of power. The nation, North and South, was in repose, from which there seemed no reason why it should be disturbed.

Although he had not fully recovered from his recent

[1] Some one said to the landlord of a New Hampshire tavern, "What sort of a man is General Pierce?" "Waal, up here, where everybody knows Frank Pierce," was the reply, "and where Frank Pierce knows everybody, he's a pretty considerable fellow, I tell you. But come to spread him out over this whole country, I'm afraid he'll be dreadful thin in some places." (Perley's *Reminiscences.*)

illness, Caleb Cushing made his way by easy stages to the capital, reaching there in season to sit, wrapped in a heavy ulster, on the platform with Pierce when the latter, facing a light fall of snow, delivered his inaugural address. The new President's program offered nothing startling. He outlined the traditional vigorous Democratic foreign policy, reaffirming the Monroe Doctrine, hinting that Cuba might shortly be acquired by our government, and adding that he had no "timid forebodings of evil from expansion." He spoke little on domestic matters, simply stating his conviction that the compromise measures of 1850 were "strictly constitutional" and should be enforced in every detail. Everybody except the extremists was satisfied with what the President had said.

Cushing's appointment as Attorney General reached him on the next morning, and he sat in his first cabinet council five days later. He found among his associates some strong but also some unimpressive men. Marcy, the veteran Empire State politician, who had been called, as a matter of strategy, to the Department of State, was a heavy-faced, square-jawed public servant of the conservative type, — reserved, unobtrusive, and shrewd. He could be counted upon to be a balance wheel in the administrative machine. Aside from Cushing himself, the most powerful member was Jefferson Davis,[1] the

[1] Jefferson Davis (1808–89), a graduate of West Point, had some military experience in the Black Hawk War, but resigned his commission to settle down on a Mississippi plantation. He was chosen to the national House of Representatives, served gallantly as a Colonel in the Mexican War, and was elected United States Senator in 1847. In 1851, he ran for Governor of Mississippi as a candidate of the State Rights Party. Defeated for this office, he had retired to private life, from which he was recalled, much against his will, by Pierce.

Secretary of War, who had succeeded Calhoun as the leader of the Southern rights movement. He was a cold, unbending, scholarly man, of inflexible obstinacy and masterful manner, but very nervous and suffering acutely at times from neuralgia. James Guthrie, the Secretary of the Treasury, a Southern Unionist, had an excellent financial and business standing in Kentucky, but was not of national fame. He has been described as a "tall, awkward man, with the appearance of a farmer and a sleepy drawl which led people to believe he was slow." Another Unionist from the South was the Secretary of the Navy, James C. Dobbin, a North Carolina lawyer who had sat two terms in Congress and had a reputation as a patient, hard-working executive. Robert McClelland, the Governor of Michigan, became Secretary of the Interior. He was a person of grim and saturnine countenance, who had long been a friend of Lewis Cass and had leanings towards the Free Soil Party. James Campbell, a Pennsylvania judge, had been suggested by Buchanan for the office of Postmaster General. The cabinet represented fairly wide variations in political leanings, the range between Davis and McClelland, for instance, being rather great. They did, however, get along without much friction. Only Marcy, Davis, and Cushing were known beyond their own states, and Cushing, with his varied experience, his forceful character, and his unsparing energy, was bound, in such a group, to be a controlling influence.

If Cushing had been disappointed at not being made Secretary of State, he carefully concealed his chagrin. He had learned, after some political buffeting, to prefer the reality to the outward show of power; and it was soon evident that the reality of power was to be his. It happened that Marcy was a different type, more interested in the rewards than in the responsibilities of his

office. He found his duties complicated and burdensome, including as they did many miscellaneous and onerous labors which, in the course of a generation, had been lodged in that department because no one knew where else to assign them. Aware of Cushing's capacity for getting things done, Marcy called him into consultation, with the result that the two advised the President to transfer from the office of the Secretary of State to that of the Attorney General, three branches of the public business: pardons, legal appointments, and such official correspondence as the head of any other department might ask to have carried on. Cases arising under the extradition laws, and also judicial appointments, were, at Marcy's especial request, placed within Cushing's jurisdiction. The functions of the Attorney General were, by this arrangement, practically doubled, the Secretary of State being left with foreign affairs, the custody of the great seal, together with the laws, and the administration of the territories. This agreement, which was instituted not only to relieve Marcy but also to afford Cushing scope for his talents, made the place of Attorney General under Pierce more important than that department had been before in our history. Because of it, Cushing had a part in nearly every matter of significance arising during the next four years in Washington. The New York *Evening Mirror*, on May 13, 1853, stated what was undoubtedly the truth:

"The Honorable Caleb Cushing, Attorney General, is unquestionably the leading spirit of the cabinet. He has taken the whole building opposite the Treasury, lately occupied by the Department of the Interior, and fitted up his rooms with a regular audience chamber, which is said to be even more thronged with applicants for office than the 'Ante-Room' of the White House. The judicial appointments have been transferred to the Attorney General's Department, and various other

'patronage' placed in his hands. In Washington, Mr. Cushing has already received the sobriquet of 'Richelieu'; and he is evidently crowding the Secretary of State in the struggle for executive influence and popular admiration."

At the very start, moreover, Caleb Cushing took a step which added immeasurably to the dignity of his position. His predecessors in the department had not felt themselves obligated either to establish a permanent residence in Washington or to abandon the private practice of law. The salary of the Attorney General had, however, just been raised to $8000, on an equality with the other cabinet posts, and Cushing conceived it to be his duty to give his time entirely to the government. He was thus the first Attorney General of the United States to hold himself strictly to the responsibilities of his office, and to withdraw completely from any other pursuits in law or business. This was an important advance in the evolution of our system of cabinet government.

With his gift of making the most of every opportunity, Cushing soon became, in a very definite sense, the mouth piece of the administration. In him Pierce obviously had great confidence. Cushing wrote almost daily editorials for the Washington *Union*, the administration organ in the capital; he prepared some of Pierce's noteworthy state papers; he was called into conference with the President on nearly every vital issue brought up for consideration. He took a lofty conception of his department, which he made, for the time being, "the great, controlling, supervising office" of the administration. No problem was too great, no question too small, for the attention of the indefatigable Attorney General.

Pierce's administration, rightly analyzed, is a struggle between the two groups headed respectively by Marcy and by Caleb Cushing, — one conservative, cautious, and

peace-loving, the other radical and belligerent. In foreign affairs, as we shall see, Cushing, with Davis as an ally, carried everything before him for a time, but was eventually subdued and chastened by Marcy's calming influence. In domestic matters, on the other hand, Cushing and Davis soon gained the upper-hand, and their opinions had a large share in determining the policy of the administration towards slavery. Even when feeling ran high, however, there was no real quarrel, and Pierce's cabinet was the first up to that time which ran for a full four years without a change.

It is the problems at home which claim our first consideration. For a few months after the inauguration, all was quiet. It was a true "era of good feeling." The discovery of gold in California had brought affluence to many. Railroads were being everywhere laid down. In the summer of 1853, workmen were getting good wages and spending their money freely, while our industries were paying dividends. Prosperity was bringing comforts and luxuries into even the humbler American homes. We were becoming a country where costly dresses, expensive furniture, and palatial hotels aroused the interest of foreign visitors. The rapid increase in wealth had been followed by extravagant living. The opening of the great Crystal Palace Exhibition in July presented a fitting symbol for what was evidently a happy, materialistic age. Underneath one huge roof were gathered,

> "All of beauty, all of use,
> That one fair planet can produce."

The President and his cabinet, going to New York for the dedication, were dined and wined to an extent almost barbaric, and returned exhausted from the ordeal.

Superficially, then, the Pierce administration began

under good auspices. Factional disturbances, party jealousies, and sectional quarrels were non-existent. But it was not long before the calm was disturbed in a way which did not leave Caleb Cushing guiltless. We have already dwelt at some length on the coalition in Massachusetts between Democrats and Free Soilers. Cushing had never favored this combination, and had seen with regret the joy of the abolitionists at securing Sumner as a voice from Massachusetts in the Senate of the United States. In 1852, moreover, Cushing was resolute in opposing any Presidential candidate who was not against abolitionism, and the decisive result of the election had confirmed his oft-expressed belief that the Democrats, with their platform of allegiance to the Compromise of 1850, were quite strong enough to make their own way, even in Massachusetts. It was this feeling which led Cushing, on September 29, 1853, to send to Richard Frothingham, editor of the Boston *Post*, a letter which came to be known as Cushing's "Ukase." It read as follows:

"I perceive that in several counties in Massachusetts Coalition Senatorial tickets have been formed of Associated Democrats and Free Soilers. My judgment is that the Democrats who have participated in this have done worse than to commit a fatal error. They have abandoned a principle which is fundamental. To support or vote for the Free Soilers of Massachusetts, is to give countenance and power to persons engaged avowedly in the persistent agitation of the Slavery question, and therefore hostile in the highest degree to the determined policy of the Administration. The President entertains immovable convictions on this point, as I have had occasion to express to you heretofore, and all of us whom he has called to the public service here, most heartily and zealously sustain his views on this subject as being the only ones consistent with personal honor, the integrity of the Constitution, or the permanency of the Union. If there be any purpose more fixed than

another in the mind of the President and those with whom he is accustomed to consult, it is that the dangerous element of Abolitionism, under whatever guise or form it may present itself, shall be crushed out, so far as his administration is concerned. This the President declared in his Inaugural, — this he has declared ever since, at all times, and in all places, where he has had occasion to speak on the subject.

While he does not assume to judge of the hearts of men who publicly avow sound principles, he only needs overt acts to show where they are, in order that his settled policy in the conduct of the affairs of government shall be unequivocably manifest. Those who have apprehended halting or hesitation on the part of the President, in treading any path which truth and patriotism open to him, will now find themselves greatly mistaken. He is up to this occasion. His policy was not hastily settled. While he occupies his present position, it will never be departed from. The constitutional rights of all the states of the Union are as dear to him as the rights of New Hampshire.

I have perceived from the outset that this great principle of the Constitutional rights of the states is fastened in his thoughts as the cornerstone of the Union. Depend upon it, no matter what consequences may impend over him, he will never allow it to be shaken by Abolitionists or fanatics, but will set his face like flint as well against right-handed backslidings as against left-handed defections which may prejudice or embarrass the onward progress of the Republic."

The circumstances leading up to this *ex cathedra* pronouncement require, perhaps, further explanation. Many old-line Jackson Democrats could not forget that Caleb Cushing had begun his political life as a Whig, and that, in his Congressional days, he had been allied with Whittier, Adams, and other anti-slavery men in fighting for the Right of Petition. From time to time in the press there would appear insinuations that Cushing was at heart a Free Soiler. The last straw came when a certain Benjamin Barstow, of Salem, made a discursive speech in the Massachusetts Democratic Convention *On the Abolition*

Propensities of Caleb Cushing, in which, after reviewing Cushing's record, he charged him not only with being still a Whig, but also, most ludicrously, with being an "abolitionist agitator." Barstow's only arguments were based on Cushing's public utterances from 1836 to 1842, in which he had expressed an aversion to the slavery system. Everybody should have known where Cushing stood in 1853. Nevertheless Barstow's remarks did not please the Attorney General, and, after they had been brought to his attention, he resolved to make a statement so clear, so unreserved, that no one could mistake his views.

The letter to Frothingham was hastily written, and obviously a tactical blunder. The autocratic tone, the threats only half-veiled, inevitably alienated many persons who resented having the whip cracked over their heads. It was not in Cushing's nature to exercise moderation in a position of power or to think in terms of compromise. Whatever he undertook, he did with all his might. Whatever he thought, was right in every particular.[1] Even Webster, who had disliked the radical abolitionists, had never openly advocated that their belief should be "crushed out." But Cushing was not in a conciliatory mood. He displayed the same lack of tolerance in a letter on November 26, to Thomas C. Reynolds, District Attorney of Missouri, summarizing some aspects of his political creed:

[1] Cushing, in his rage at the abolitionists, used to quote to his friends the resolution passed by the Massachusetts Anti-Slavery Society on January 24, 1850, at its anniversary meeting in Faneuil Hall, — "We do hereby declare ourselves the enemies of the Constitution, Union, and Government of the United States, and the friends of the new confederacy of states, where there shall be no union with slave-holders."

"I cannot fail to see now that the movement in N. York is one of predetermined opposition, and of speculation on the succession.

I hold that all such movements are reducible to fixed laws, discernible from the history of the country, & the principles of human nature.

1 — The President is the necessary head of the party in power, because questions of public policy must be decided by him.

2 — At the beginning of every administration some disappointed persons take a view of some question opposite to that taken by the President, & in the assumption on their part of exaggerated party orthodoxy.

3 — The opposition thus engendered in the successful party sometimes breaks it down, that is, gives power to the opposite party.

4 — It *always* destroys the *bolters* themselves; because either the administration stands in spite of them, or it falls and carries them down with it.

I have personally seen and studied this, in the case of six successive administrations or Presidential terms, and I am sure of my conclusions."

This, and the letter to Frothingham, have a dogmatism like that of the hero in *Hudibras*, who was ready,

> "To prove his doctrine orthodox
> By apostolic blows and knocks."

Thorough-going Democrats, Southerners, Northern "Hunkers," — all these read Cushing's "Ukase" with relish. The Washington *Union* said editorially on November 1:

"The policy of the administration is stated by the distinguished attorney with all the clearness, force, directness, and boldness with which that talented gentleman uniformly expresses his sentiments. No one can misunderstand him; and, as he speaks by authority, no office-holder can misunderstand the fate that awaits him if his conduct brings him within the import of the rule so succinctly and forcibly laid down."

The Boston *Post* three days later said:

> " In the sentiments of this letter, put forth as the President's, the country has the assurance that it has a Chief Magistrate of the genuine ' Old Hickory ' stamp, honest, decisive, and brave."

The honesty and bravery of Cushing and Pierce must be admitted, but of their wisdom there is rather less certainty. The Free Soilers accepted the letter for what it was, — an open declaration of war. At one of their meetings in Faneuil Hall, Charles Francis Adams, displaying a copy of the " Ukase," said:

> " I hold in my hand the most monstrous document that was ever presented to a free people. . . . . I very much mistake the character of the Democracy of the city where I dwell, if they do not spurn, and hiss, and spew out of their mouths upon this manifesto."

In spite of the approval which it received in some quarters, the reaction from the letter was, on the whole, detrimental to the Democratic hopes. It was an unfortunate and unnecessary revival of an issue which the party had promised not to revive. Proscription in a republic, moreover, is a dangerous policy to advocate, and its champions are likely to suffer when, at some later date, they fall into the hands of their foes.

As an indication of the real temper of the Pierce administration, this utterance of Caleb Cushing has been given less attention than it deserves. The President had taken office amid the waving of olive branches. In a " conspiracy of silence," everybody, except the radicals, had been willing to allow a fair trial to the compromise measures of 1850. Then came the " Ukase," the words of which were calculated to awaken sleeping animosities. And the " Ukase " was only a preliminary step to the Kansas-Nebraska Act and the Dred Scott decision.

In view of the Baltimore platform and of Pierce's Inaugural, it was to be expected that the administration should take a strong stand in support of the Fugitive Slave Law. McClelland, the member of the cabinet most lukewarm for slavery, in a letter to the Marshal of Pennsylvania, guaranteed that officer every possible aid in the faithful execution of his duty. On November 14, 1853, in a letter to the President, Cushing gave his legal opinion, reinforced by a long argument, to the effect that a United States Marshal against whom suit had been brought by a negro for alleged illegal imprisonment, had a right to employ counsel in his defense at the charge of the United States. The result of this opinion was, of course, to strengthen the hands of marshals, and thus to make the Fugitive Slave Law easier to enforce.

Other interpretations of the Fugitive Slave Law are worth mentioning as showing the animus of the administration. On February 18, 1854, in an opinion addressed directly to the President, Cushing asserted that a citizen of the United States has a right to reclaim a fugitive slave, not only from states and organized territories, but also from "all the unorganized territorial possessions of the United States," and that if in such territory there was no United States Commissioner to act, the claimant might "proceed to recaption without judicial process." On May 27 of the same year he promulgated the doctrine that a Marshal of the United States, opposed in attempting to secure a fugitive slave, has authority to "summon the entire able-bodied force of his precinct, as a *posse comitatus*," and also to call upon "any and all organized force, whether militia of the state, or officers, sailors, soldiers, and marines of the United States." He later ruled, in connection with the Fugitive Slave Law, that a person under arrest "on the warrant of a competent

judicial authority of the United States," cannot lawfully be discharged on a writ of *habeas corpus* by the courts of a state. In these notable cases Cushing assumed almost the authority of the Supreme Court, and cooperated with the administration by producing a canon of constructive opinion in favor of the drastic enforcement of the Fugitive Slave Law.

This phase of the Pierce program passed almost unnoticed in the storm aroused by the Kansas-Nebraska Act. On January 4, 1854, Stephen A. Douglas, apparently without consultation with the President, made a report in the Senate regarding the organization of the territory of Nebraska, in which he proposed to leave all questions " pertaining to slavery . . . to the decision of the people residing therein." Douglas, nicknamed by his friends the " Little Giant," was a short, stocky figure, robust in body and mind, with massive head crowned with thick curly hair, who, although born in Vermont, typified the young and undaunted West, — impetuous, bold, and unafraid. His later career was that of a soldier " fighting in wars that never can be won." In 1854, however, he was optimistic, supreme over his rivals, and his prowess in debate was everywhere conceded.

The significance of Douglas's action lay in the fact that the Missouri Compromise of 1820 specifically and unequivocably prohibited slavery in that portion of the country which, by this new bill, comprised Nebraska. Douglas was, therefore, abrogating the Missouri Compromise, and thus allowing slavery a foothold on soil from which it had hitherto been shut out. What had been implied in the original bill, Douglas was soon compelled to assert directly, through the clever move of Senator Dixon, who offered an amendment providing explicitly for the appeal of the Missouri Compromise.

Motives have been attributed to Douglas which probably had very little to do with his conduct at this time. As an Illinois man, he was keenly interested in the project of a trans-continental railroad, the eastern terminus of which he wished to have at St. Louis, and not at New Orleans. To this end he saw how essential it was that the lands west of the Missouri should be organized under federal control. He certainly never anticipated the avalanche of criticism which descended upon him. The truth seems to be that, not fully realizing the political significance of his action, he found himself, before he knew it, in a position where he could not retreat but must bear it out "even to the edge of doom."

Although they later came to differ on the territorial question, Caleb Cushing and Stephen A. Douglas stood not very far apart in 1854. After his return from the Mexican War, Cushing was obviously more sympathetic with the Southern viewpoint and less tolerant of radical abolitionists. He did not, however, object to the Wilmot Proviso; and he cordially supported all the compromise measures of 1850 because, like Webster, he thought that they might effect a definite settlement of the issues involved. Calhoun, as early as 1847, had maintained in the Senate that the Missouri Compromise was unconstitutional, and had announced the doctrine, then viewed by most people as preposterous, that slave-holders could take their slaves anywhere within the new territories without interference; but Cushing paid little attention to the grim South Carolina "irreconcilable," who dared to pronounce slavery to be "a good, a positive good." When Douglas introduced his report on Nebraska, Cushing wrote an editorial for the Washington *Union* approving of the principles there laid down. However, he did not at first like Dixon's amendment, and in the *Union*

for January 20, suggested that the good to be gained from repealing the Missouri Compromise would not compensate for the agitation which the administration would have to face. Pierce's immediate impulse was to agree with Cushing.

But pressure was now brought to bear upon the President. Douglas, Davis, and others conferred with him, and, through persuasion and argument, secured his approbation. With this backing, Douglas offered a substitute bill, dividing the territory in question into two parts, — the northern section to be Nebraska, the southern, Kansas, — and declaring that the slavery restriction in the Missouri Compromise, having been "superseded" by the legislation of 1850, was therefore "inoperative." On the next morning, — January 24, — Cushing, who had evidently been converted with his chief to the support of Douglas's new plan, published in the *Union* an article announcing that the Kansas-Nebraska Bill was to be part of the legislative program for the session. One paragraph read:

> "We cannot but regard the policy of the administration as directly involved in the question. That policy looks to fidelity to the Compromise of 1850 as an essential requisite in Democratic orthodoxy. The proposition of Mr. Douglas is a practical execution of the principles of that Compromise and therefore cannot but be regarded by the administration as a test of Democratic orthodoxy."

Here was the same tone of dictatorship which had been used in the "Ukase" of the preceding autumn. Even if we did not have Cushing's original draft, a critic of style would be bound to cry, after reading these forceful sentences, "Aut Caesar aut nihil," — Caleb Cushing, or nobody.

The matter of Nebraska territory was not within Cush-

ing's jurisdiction, for the division of cabinet duties had left all territorial problems under Marcy's control. He was not even present at the famous Sunday conference in the White House, when Pierce was induced to become a partner in Douglas's scheme. Once persuaded that the measure had merits, however, Cushing became one of its most ardent advocates. He and Jefferson Davis worked side by side, — at first in opposition to Marcy, — in defending the bill in the cabinet; but eventually even Marcy joined with the others, and the cabinet presented a united front. Cushing wrote in the Washington *Union*, "If it [the Kansas-Nebraska Act] is defeated in the House, it will, it must be admitted, be a defeat of the administration." Cushing employed every resource in trying to gain votes for Douglas. It is alleged by the biographer of Hannibal Hamlin, that Cushing went on one occasion to the rooms of the Maine statesman in the St. Charles Hotel, and promised him, in return for his support of the Kansas-Nebraska Act, a control of all the official government patronage in New England. Hamlin, so the story goes, rose and replied:

> "Cushing, I am forty-four years old. I have never yet done anything for which I am ashamed, and with God's help I don't propose to do so now."

Whether or not this tale is apocryphal, it illustrates the kind of zeal which Cushing displayed in the cause.

It was inevitable that the bill should meet with violent opposition. No one was surprised when Garrison, on July 4, 1854, at Framingham, Massachusetts, held up a copy of the Constitution of the United States, denounced it as "a covenant with death and an agreement with Hell," and burned it then and there, exclaiming, "So perish all compromises with tyranny!" It was more un-

usual when a group of "Independent Democrats" in Congress, including Chase, Sumner, Giddings, and others, published a protest, declaring that the bill was a gross violation of a sacred pledge. In the Senate, Chase, Seward, and Sumner made notable speeches, and Cushing's old friend, Edward Everett, representing the conservative Whigs, came out unexpectedly against the bill. Douglas, to his consternation, discovered that he had reaped the whirlwind.

Undismayed, however, he continued the battle in the Senate, almost single-handed against his foes. Cool and suave, he was a match for them in courtesy as well as in eloquence. Under his leadership, the Democrats, intoxicated with power, pushed the Kansas-Nebraska Act through the Senate and the House; and President Pierce promptly attached his signature, making it the law of the land. In his first message to Congress, Pierce had assured his countrymen that the existing "sense of repose and security" on the slavery question should "suffer no shock" during his term, if he had power to avert it. Now, less than six months later, he had broken that solemn covenant and made slavery the chief issue of his administration.

To Cushing, who had labored unceasingly through personal interviews and editorials in the *Union* to obtain the necessary majority, it seemed a glorious victory; but it brought in its train disaster to the man responsible for it. It was in February, 1854, that the meeting was held at Ripon, Wisconsin, which led to the formation of a new party, based on the doctrine that it is the right and duty of Congress to prohibit slavery in the territories. The true significance of the Douglas legislation was more manifest in 1856, when the young Republican Party united most of the anti-slavery elements, and the Demo-

crats rejected Pierce to make way for Buchanan. Whether we consider his action from the standpoint of high morality or of political expediency, Douglas made a colossal blunder.

The Kansas-Nebraska Bill determined that the people of any territory should, to quote the words of its author, "be left free to regulate their domestic concerns in their own way"; and Douglas constantly maintained that he was fighting for "the sacred right of self-government." He had said, "I have not brought this question forward as a Northern man or as a Southern man." That he honestly intended that the issue should be fairly decided by legal settlers is proved by his course during the next few years, while he was holding to his principle of "popular sovereignty" with a consistency and a disregard of consequences which wins our admiration. But events in Kansas did not take a course to please him.

Most Southerners believed that the result of the Kansas-Nebraska Act would be the admission of Nebraska into the Union without slavery and of Kansas with it. It was Kansas, then, that became the breeding-ground of dissension. Whenever votes were needed for the pro-slavery cause, so-called "border-ruffians" came across the line from Missouri to help by their ballots to bring slavery into Kansas. At the same time, the Emigrant Aid Society, in July, 1854, under the inspiration of Eli Thayer, began sending out emigrants from New England to Kansas, — for the most part peaceful colonists, who intended, by following out the principles of "popular sovereignty," to make Kansas a free territory. Between these two groups there was inevitably much hostility, and some bloodshed ensued, neither side being altogether to blame.

It is unnecessary to narrate here in detail the story of

the woes of "bleeding Kansas." In March, 1855, when a territorial legislature was to be chosen, at least five thousand Missourians entered the borders of Kansas and elected pro-slavery members, who then enacted a series of laws protecting slavery in every possible way. In October of the same year, the disgusted free-state men met at Topeka, there to frame a constitution prohibiting slavery, which was approved in December at an unauthorized election attended only by free-state voters. There were thus at the close of 1855 two distinct and separate governments within the boundaries of Kansas. It being the conviction of the first Governor, Andrew H. Reeder, that the pro-slavery election should be nullified because of the fraudulent practices connected with it, he made a recommendation to that effect to Washington; but President Pierce, who seems to have felt that the Kansas-Nebraska Act was really a "gentleman's agreement" that Kansas should be allowed in the Union as a slave state, refused to listen to Reeder and eventually removed him. The just procedure, if it had been possible, would have been to discard both governments in Kansas and to start again, with precautions that the election should be fairly conducted. Under existing conditions, however, such a course seemed to Pierce entirely impracticable.

The President's Third Annual Message, dated December 31, 1855, had much to say on foreign affairs, but it concluded with a long historical discussion of the developments leading up to the enactment of the Kansas-Nebraska Act and the announcement of the doctrine of "popular sovereignty." These last paragraphs, in which Pierce attempted to offer a complete legal justification for his policy, were drafted by Caleb Cushing, and, as one might expect, presented a powerful argumentative plea for the principles of Douglas's bill. As to Kansas

itself, Pierce contented himself with remarking that, although there had been acts "prejudicial to good order," none had as yet occurred "under circumstances to warrant the interposition of the Federal Executive." On January 24, 1856, the President sent to Congress a Special Message on the Kansas situation, in which he criticised with much severity Reeder's work as Governor, denounced the operations of the Emigrant Aid Companies, declared his belief that the pro-slavery legislature of March, 1855, was "the legitimate assembly of the territory" and that the deeds of the free-state party had been "of a revolutionary character," and announced his intention of exerting "the whole power of the Federal Executive to support public order in the Territory." Cushing had encouraged Pierce to place the authority of the administration on the side of what he called the "constituted authorities," — that is, the territorial legislature, — which was pro-slavery and which he, as a lawyer, believed to have the only legal standing in Kansas. The fact that this assembly, though technically conforming to the requirements, had been elected by fraud and did not represent the true will of the actual settlers, made, apparently, no impression on Caleb Cushing.

The President's Proclamation of February 11, 1856, was written entirely by Caleb Cushing, with merely a few verbal alterations from the pen of Franklin Pierce. In it, he denounced with equal vigor "persons living without the Territory, but near its border, contemplating armed intervention in the affairs thereof," and "other persons, inhabitants of remote states," who had been "collecting money, engaging men, and providing arms, for the avowed purpose of promoting civil war in the Territory." It impartially condemned all lawless acts by

either side in the quarrel and placed the United States troops at the disposal of Governor Shannon; but its tone was manifestly in favor of the territorial legislature and the pro-slavery party.

As a matter of fact, Caleb Cushing had already reached a point in his thinking where he was ready to deny, as Calhoun had done and as Jefferson Davis was doing, that Congress or the people of a territory had any right to exclude slavery from that territory. Living in close intimacy with Southern statesmen, Cushing, in his attitude towards slavery, had undergone the transition expressed in the lines of Pope:

> "Seen too oft, familiar with her face,
> We first endure, then pity, then embrace."

While he never went so far as to defend slavery as a "positive good," he was far more sympathetic towards that institution than he had been twenty years before, and the horrors of it as depicted by Mrs. Stowe in *Uncle Tom's Cabin* (1852) had seemed to him grotesquely exaggerated. He now looked upon negro servitude as an economic system which the Southern plantation owner should be allowed to maintain if he so desired; and it must be admitted that he considered black men as members of an inferior and subject race.

It was Cushing's lot in November, 1855, to pronounce an opinion which, in most essential respects, covered the ground of the famous "Dred Scott decision" of 1857. At the request of the President, the Attorney General gave an extended opinion on what he called "the equality of the states," in which he said categorically that the United States never held any "municipal sovereignty" in the territory of which any of the new states were formed; that the provisions of the Ordinance of 1787

were superseded by the Constitution; and that, accordingly, the Missouri Compromise of 1820 must have been declared by any court to be null and void *ab incepto*, "because incompatible with the organic fact of equality and internal right, in all respects, between the old and the new states." No such "extra judicial" opinion had ever before been rendered by an Attorney General. In the debate excited by the "Dred Scott decision," Cushing's earlier opinion was forgotten; but it may truthfully be said to have raised and settled the very issue which Chief Justice Taney passed upon many months later.

Taney, who was eighty years old in 1857, was very feeble in body but still clear in mind. He resolved that the Supreme Court before he left it must promulgate a verdict in the Case of Dred Scott *vs.* Sandford,[1] which had been on the docket since 1854. It was not originally the intention of the Court to offer an opinion on the constitutionality of the Missouri Compromise; but the fact that two Northern justices, McLean and Curtis, planned on their own accord to write a dissenting opinion sustaining the constitutionality of the Missouri Compromise drove the remaining six members to give a Supreme Court decision on the greatest of the questions involved. Taney, who regarded Cushing highly, consulted him on the legal aspects of the matter, and accepted fully the principles laid down in the At-

[1] Dred Scott, in 1846, had brought suit against his former master's widow, Mrs. Emerson, claiming that Dr. Emerson had taken him into territory covered by the Ordinance of 1787 and the Missouri Compromise of 1820, thereby making him a free man, and that his status as a free man had continued when he was later brought back into Missouri. The case had gone through several courts, and was finally brought before the United States Supreme Court on a writ of error.

torney General's opinion of November, 1855. If Taney, as seemed likely at one time, had died in 1856, and Cushing, who was the best available candidate, had been appointed Chief Justice, the "Dred Scott decision" would have been rendered in substantially the same spirit and language.

As it appeared in 1857, that decision settled three mooted points: that a negro cannot be a citizen of the United States; that the Missouri Compromise was null and void; and that Congress, — and therefore any territorial government, — has no power to exclude slavery from a territory. The "Dred Scott decision," then, went beyond the Kansas-Nebraska Act in that it gave judicial sanction of the highest order to the Calhoun-Davis doctrine that no territorial legislature could exclude slavery from a territory, that right being confined to sovereign states only. In other words, every slave owner could with impunity take his slaves into any territory until it had become a state and had specifically abolished slavery.

It is probable, from Cushing's correspondence, that he had some advance information as to the purport of the Supreme Court ruling. On March 4, 1857, knowing that this critical decision was to be made public within a few days, he said, in addressing that exalted tribunal for the last time as Attorney General,— "To you . . . our country looks with undoubted confidence, as the interpreters and guardians of the organic laws of the Union." He was in the court room on Friday, March 6, when Taney, emaciated, worn, and stoop-shouldered, in a voice which sunk sometimes below a whisper, read the famous decision; and Cushing, as he walked out to the street with friends, expressed his unqualified approval. In a series of editorials in the Washington *Union* during

March and April, Cushing defended the judgment of the Court, and attacked the dissenting opinions of Justices McLean and Curtis.

It was evident, however, that Stephen A. Douglas would have difficulty in reconciling "popular sovereignty" with the "Dred Scott decision." It is true that Douglas at once endorsed the verdict of the court; and when called upon by Lincoln to explain how the two theories could be made consistent, he replied, in his well-known "Freeport doctrine," that a master's right to his slave in a territory is barren and worthless unless "sustained, protected, and enforced by appropriate police regulations and local legislation." As 1860 drew near, the Democratic Party was split into two sections: one, headed by Douglas, still upholding "popular sovereignty" and insisting that the enactment of police regulations of the kind suggested belonged in the hands of the territorial authorities; the other, led by Jefferson Davis, maintaining that the "Dred Scott decision" had determined that slavery had spread over the territories with the Constitution and should be protected therein by Congressional action. It was with the latter group that Caleb Cushing cast his lot.

The extreme Southerners who had cheered Douglas so loudly when he was battling for the Kansas-Nebraska Act in 1854, discovered three years later that they had a real grievance against the Illinois Senator. In October, 1857, a constitutional convention assembled at Lecompton, Kansas, made up of delegates chosen by only 2200 of the 9251 registered voters in the territory, the free-state men having declined to participate. This convention, which was in no true sense representative of public opinion, prepared a constitution to be submitted to the people, who, by an ingenious device, were not to be permitted to

reject the constitution, but must vote for it, either "with slavery" or "without slavery." Buchanan, who had then become President, favored the Lecompton Constitution; but Douglas in the Senate, on December 9, 1857, had the courage to oppose it, asserting that the great majority of Kansans were antagonistic to it and would refuse to go to the polls on such a question as it presented. This action on the part of Douglas was one of the noblest deeds of his life, but he drew upon himself the wrath of every one who was trying to bring slavery into Kansas. In December the pro-slavery men in Kansas voted to accept the Lecompton Constitution "with slavery." On January 4, 1858, however, the free territorial legislature called an election, for which the free-state men turned out in large numbers and repudiated the constitution by an enormous majority. A long and bitter debate in Congress followed. At last, in August, 1858, the Lecompton Constitution was again submitted to the voters of the territory, by whom, in a fair election, it was rejected by more than ten thousand votes. Kansas was finally brought into the Union under the Wyandotte Constitution, prohibiting slavery, which was ratified in October, 1859.

It is only fair to Cushing to point out that, throughout this controversy, he never ceased to appeal to those elements of the community which stand for law and order. In the Washington *Union*, he condemned Sumner's phillipic *The Crime against Kansas* (May 19, 1856), calling it a "studied appeal to fanatical and sectional passions." He did not, however, condone the dastardly attack of Preston S. Brooks on the defenseless Massachusetts senator, and he sent Sumner a note of sympathy. Cushing's law-abiding nature instinctively revolted against such an outrage. Violence of any kind was repugnant

to him as contrary to law, and he could not bring himself to approve of it in either party to a dispute. On the other hand, it cannot be denied that he, like Pierce, had accepted the Southern point of view with regard to slavery in the territories, and that, in this respect as in others, he broke for a time with his own New England. This position he took, not for any personal advantage or for any selfish motive, but because his legalistic mind, starting with certain premises, thought the matter out to what seemed to him a logical conclusion. His reasoning to himself, as to many others, appeared to be sound, but he neglected to consider that most men are governed not by argument but by feelings, prejudices, intuitions. In this case, their consciences were better guides than Cushing's logic.

The Kansas-Nebraska Act was undoubtedly the most important single event of Pierce's administration and the one domestic matter which deserves any extended discussion. It is now the moment to turn to some matters of foreign policy in which Cushing gained credit for himself and for his country. The mid-nineteenth century happened to be a period when causes of controversy between the United States and both Great Britain and Spain were frequent, often requiring the utmost tact on the parts of the governments concerned in order to avert war. We were still bickering with England over some of those minor issues which seemed regularly to develop between us and our mother country. In 1850, the Clayton-Bulwer Treaty had been concluded, providing that neither England nor the United States should obtain exclusive control over an isthmian canal, or erect fortifications commanding it, or make any attempt to occupy or control any Central American state; that any canal built across the isthmus should be neutral, "for

the benefit of mankind, on equal terms to all."[1] The Democratic Party, including Caleb Cushing, objected strenuously to this treaty, on the ground that we were making unnecessary concessions and that some of the phraseology was ambiguous. In August, 1852, moreover, Great Britain took possession of the Bay Islands, off Honduras, thus violating, so Americans claimed, both the Monroe Doctrine and the Clayton-Bulwer Treaty. Furthermore the Fisheries Convention of 1818, containing a clause forbidding Americans to take fish within three miles of the Canadian coast, had always been a source of trouble, and in July, 1852, Great Britain, after some preliminary negotiations, had actually despatched an armed fleet to cruise in British-American waters and defend her interests. At these signs of aggression the Democrats were much incensed, and their anger was not mitigated when it was learned that Great Britain and France actually were contemplating the formation of a tripartite agreement with the United States, guaranteeing Cuba to Spain.

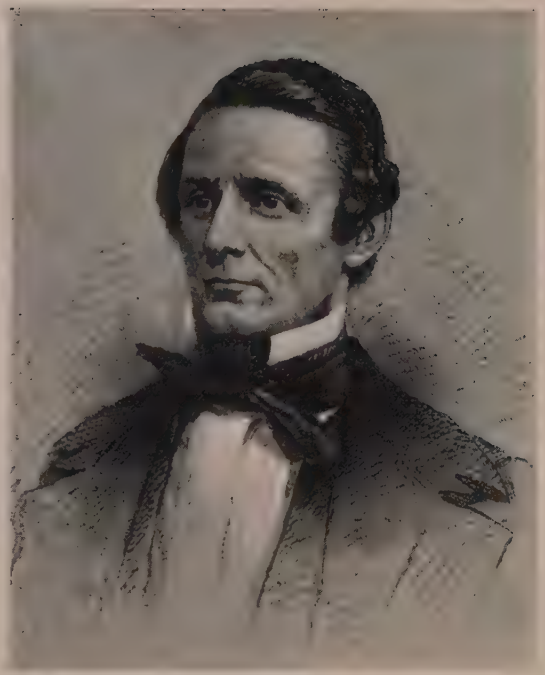
Such was the situation in foreign affairs when Franklin Pierce became President. The Democratic Party had always prided itself on its vigorous foreign policy and its belief in the legitimate expansion of our nation. It now came into power after four years of Whig rule with the determination to secure Cuba if possible, and to assert our rights against the demands of Great Britain. Caleb Cushing's "imperialistic" ideas were well known by

[1] The British had long had a settlement in British Honduras and had taken a protectorate over the Mosquito coast along the Caribbean Sea. Under this claim two British vessels had, in 1848, stormed the port of San Juan, which Nicaragua asserted to be her territory, and had taken possession of that town. Both sides to the Clayton-Bulwer Treaty apparently understood that the stipulations regarding neutral territory did not apply to British Honduras.

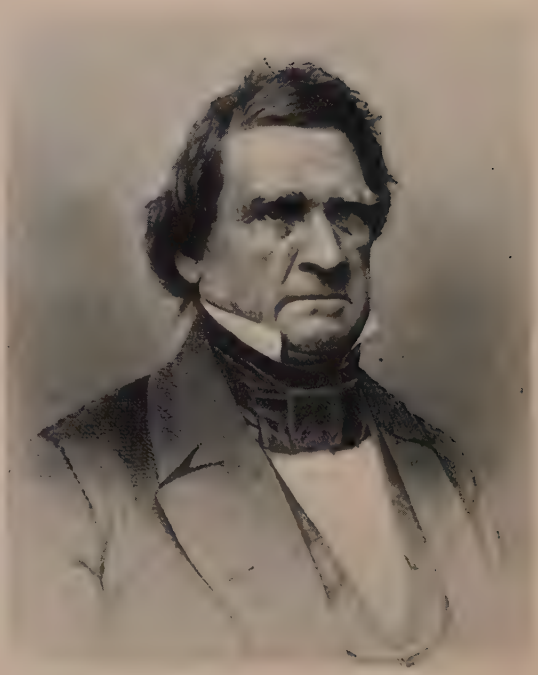
1853; and it certainly looked as if his ideas would be those of the administration. C. Edward Lester, the London *Times* correspondent in this country, said that Cushing, ten days after the inauguration, invited him to his office and offered to explain to him the foreign policy of the new government, — "for me to put in the London *Times*." Lester made the call, Cushing locked the door, and the former for two hours took down notes from dictation. The document thus produced by Cushing's high authority was remarkable in its predictions, and some paragraphs are worth quoting:

"It was expected that the administration of General Pierce would be one of progress, and it doubtless will be. The only apprehension that can be anywhere felt will be that this progress will not be pacific in its character. I do not think that in any portion of this country there is any alarm felt that the foreign policy of General Pierce will not be characterized by justice, moderation, and good faith. But there is well-founded alarm everywhere lest some act of the new Dictator of Mexico, or the Governor-General of Cuba, or some collision between British and American citizens in Central America, may precipitate us into difficulties for which the most consummate statesmanship may find no remedy but in hostilities. . . . I feel alarmed lest Santa Anna may drag us into another difficulty with Mexico. If he does, it will be almost inevitable that the contest will end the history of Mexico as an independent power. It is already dotted over by the emblems of American enterprise, and its fields have all been explored by American adventure.

I am disposed to believe that before any issue is made with Spain which will be likely to involve international hostilities, a demand will be made by our government in the justice of which the whole civilized world will concur. That a European power should hold so vast, so populous, and so valuable a colony in the western world, as Cuba, and place over its government a viceroy who has no diplomatic authority from the home government even to treat with neighboring powers, and yet clothe that viceroy with such supreme authority that he may infringe the



Jefferson Davis



William L. Marcy

rights, insult the flag, or imprison and shoot the citizens of other nations . . . such an anomaly as this, it is claimed, does not exist in the civilized world, or, if it does, it ought to exist no longer. It would seem, and it really is so, that the Spanish Court is madly bent upon rushing to ruin."

These sentiments, so far-reaching in their implications, indicated that Pierce and Cushing were for the moment agreed in their "imperialistic" tendencies; and indeed it seemed as if the "manifest destiny" group would carry all before them. Charles Sumner wrote to Theodore Parker:

"The rulers of the country are the President, with Cushing, Davis, and Forney.[1] Nobody else has any influence. These are hot for Cuba and war."

In the cabinet councils, Marcy appeared as an "old fogy"; while Cushing personified to the public the dashing spirit of "young America." Reports of disagreement prompted the rumor, as early as May, 1853, that Marcy, dissatisfied, would retire to the French Mission, leaving Cushing to succeed him in the Department of State. Intimations of this kind were, however, unwarranted, and in the end the differences in temperament were reconciled by the progress of events.

There were some matters, fortunately, on which Marcy and Cushing could have no divergence of opinion. The famous case of Martin Koszta[2] gave Marcy a welcome

[1] John Weiss Forney (1817–81), an enterprising Philadelphia journalist, became, in 1851, Clerk of the House of Representatives and editor of the Washington *Union*. In this capacity, he was exceedingly influential, and was very close to both Pierce and Cushing.

[2] Koszta, a native of Hungary, had fled to America, where he had filed notice of his intention to become an American citizen. Later he went to Turkey, where, at Smyrna, he was kidnapped by the Austrian Consul General and put in irons. Commander Ingraham

opportunity to emulate Lord Palmerston by asserting the dignity of his country, and his "Hülsemann letter" had a ringing tone which thrilled patriotic hearts. Cushing supported Marcy in every detail, commending him highly for enunciating with such clearness our doctrine of "Civis Romanus Sum." The negotiation of the Gadsden Treaty with Mexico settled a disputed boundary with that nation and established more cordial relations between her and us. By firm and judicious management, we obtained from Denmark for our vessels an exemption from the so-called "sound duties," which every European government was then compelled to pay. Commodore Perry's Treaty with Japan, signed in March, 1854, was promptly and unanimously ratified by the Senate, to Cushing's keen satisfaction. A commercial treaty with Borneo was perfected, and an important agreement with Russia signed, making "Free ships, free men" part of the international law between the two countries. A reciprocity treaty with Canada was pushed through in 1854, giving the United States some valuable fishery concessions. All this was honor enough for a single administration. But it was in our relations with Spain and with Great Britain that the really significant questions arose.

Pierce had never concealed his desire to acquire Cuba at the first convenient and legitimate opportunity. Cush-

---

of the American war-ship, *St. Louis*, hearing of this unwarranted arrest, turned his guns on the Austrian vessel on which Koszta was imprisoned, and, by a show of force, compelled the Austrian authorities to hand Koszta over to the French Consul, pending some arrangement between the countries concerned. Hülsemann, the Austrian *Chargé d'Affaires* in Washington, then demanded that we disavow Ingraham's action and make proper reparation to Austria. It was in reply to Hülsemann that Marcy wrote his letter. Koszta, the innocent victim of an international dispute, was finally released and returned to the United States.

ing, it must be admitted, would have seized any pretext for a break with Spain, and, in February, 1854, the long-expected "overt act" was committed. The *Black Warrior,* a vessel engaged in coast trade between New York and Mobile, was detained at Havana, and four hundred bales of cotton were confiscated by the customs authorities. Washington was, of course, much aroused by the news. Pierce consulted Cushing, who advised drastic action, and instructions were sent at once to Pierre Soulé, our Minister to Spain, directing him to insist on damages and a full apology. The answer, withheld for some weeks, seemed even to Marcy to be unsatisfactory. Caleb Cushing advocated the sternest retaliation. In an editorial for the Washington *Union,* he wrote:

> "We are quite free to state, and in terms so emphatic and unequivocal as to admit of no misinterpretation, that if ample satisfaction is not allowed for the piratical seizure of the *Black Warrior,* we shall advocate an immediate blockade of that island."

The New York *Times* suggested that the administration had purposely arranged matters so that war with Spain would be inevitable.

The *Times,* however, was incorrect in its supposition. Marcy, during the late spring of 1854, had been able to convince the President that the American people, especially in the Northern states, would not endure an act of unwarranted aggression in Cuban affairs; and Pierce, eager though he was to add Cuba to our dominions, allowed the *Black Warrior* episode to linger along to a more fortunate conclusion. The President was the more easily persuaded to this course because of the controversy over the Kansas-Nebraska Bill, which was then very violent and which occupied most of his attention. Had it

not been for this unanticipated domestic disturbance, Cushing and Davis might have been able to force Pierce's hand and the events of 1898 might have been forestalled by more than half a century.

The Cuban question, however, was still in abeyance. In the autumn of 1854, with the permission of Marcy, our representatives at London, Paris, and Madrid met at Ostend to talk over the attitude of European nations regarding Cuba. The three men, — Buchanan, Mason, and Soulé, — then prepared and sent to the Department of State the notorious "Ostend Manifesto," in which, after pointing out the importance of Cuba, they coolly advanced the opinion that, should Spain refuse to sell us that island at a reasonable price, we should be justified in taking it by force of arms. The theory that "Right makes Might" was as openly advanced in this document as it was by Germany in the first months of the World War. Fortunately Marcy at once perceived the incendiary nature of the paper, had the wisdom to repudiate the ideas advanced in it, and was able to keep it suppressed for several months until the excitement over Cuba had had time to die down. Current gossip explained the matter as another phase of the rivalry between Marcy and Cushing, and attributed to the former the distinction of having blocked the latter's belligerent plans. Cushing did openly subscribe, then and later, to the doctrines of the "Ostend Manifesto," but he was in no way responsible for it, and he certainly did not know the plans of our three representatives. If it was hoped that Soulé would be able to bully Spain into disposing of the "Pearl of the Antilles," that dream was soon dissipated. Soulé, who was the author of most of the "Manifesto," resigned and came home; the questions in dispute between Spain and the United States were soon adjusted; and all chance of

acquiring Cuba during the Pierce Administration vanished into thin air.

The inauguration of Pierce did not put an end to our disputes with Great Britain. The exchange of diplomatic notes regarding the situation in Central America went on under Marcy as it had gone on under his predecessors, Daniel Webster and Edward Everett. In 1854, Marcy actually proposed that the President in his annual message recommend the annulment by Congress of the Clayton-Bulwer Treaty. To this proposition, Cushing, who had been consulted, put in a strong objection, on the ground that it would "impute deliberate and persistent breach of faith by Great Britain," the only conceivable response to which would be a declaration of war, "which it is neither just nor expedient to provoke on such an issue." He succeeded in carrying his point, and, by so doing, probably saved us from action which we should later have regretted. The incident is an illustration of the fact that Cushing, although an incurable Anglophobe, was not willing to carry his prejudices beyond the verge of legality and justice.

When, however, he was convinced that the right was on his side, nothing could make him yield an inch of ground. This characteristic was never more apparent than in the so-called "Crampton affair," which almost drew the two Anglo-Saxon nations into armed conflict. The Crimean War, which broke out in 1854, allied England with Napoleon III, against the designs of the Czar, Nicholas I, on Turkey. American public opinion was far from being unreservedly with the Anglo-French cause; indeed a large body of intelligent men were inclined to sympathize with Russia. The United States officially, however, took the obvious step of declaring our neutrality; and Marcy, on April 28, 1854, specifically noti-

fied Crampton,[1] the British Minister at Washington, that no enlistments within our borders would be permitted to either Great Britain or Russia.

The Crimean War was unpopular with the British lower classes, and Parliament, unable to secure a sufficient army by voluntary enlistment in the British Isles, passed the so-called "Foreign Enlistment Act," authorizing recruiting within the boundaries of friendly states. Crampton thoughtlessly suggested that the United States might be a suitable field for such operations; and, without taking the trouble to consult our State Department, the British Minister of Foreign Affairs entrusted the matter of recruiting in North America to Mr. Crampton, in conjunction with Sir Gaspard le Marchant, Lieutenant Governor of Nova Scotia. In March, 1855, after extensive advertising by means of hand-bills and placards, men were accepting the "Queen's shilling" in Philadelphia and New York, and were then transported to Canada.

Knowledge of this infringement of our neutrality having been brought to Marcy's attention, he referred the subject to the Attorney General, who issued instructions to all United States District Attorneys to prosecute all attempts at enlistment in the British Army, as being in direct violation of specific acts of Congress. On June 9, Marcy drew the attention of the British Government to the facts, and a week later Lord Clarendon wrote Buchanan, our Minister at the Court of St. James, announc-

[1] James Fiennes Crampton, born in Dublin, was educated at Oxford and then entered the diplomatic service, coming to Washington in 1846 as Acting *Chargé d'Affaires*. He was later appointed to full ministerial rank. He was a large man, with white hair and enormous side whiskers, who entertained at his home on Georgetown Heights with lavish hospitality and was very popular in Washington. Crampton did, however, lack tact, and could not help being indiscreet, even rude, at times.

ing that orders had been issued forbidding all recruiting within the limits of the United States. These orders reached Crampton in July, but he saw fit, on his own responsibility, to conceal them from Washington, and, according to information received at the Department of State, continued recruiting "with increased vigor." The President thereupon submitted to Caleb Cushing the question as to whether the acts charged against Crampton were in violation of the municipal law and national sovereignty. Cushing, working with great rapidity and thoroughness, then prepared his official opinion *Concerning British Recruitment in the United States,* a document which has been accepted as of high authority in international law.

Published as a pamphlet in 1856, this *Opinion* fills thirty pages and covers every phase of the topic. In structure and reasoning, it is a scholarly treatment of this important problem, displaying Cushing's legal knowledge and argumentative powers at their best. The essential question was the right of an independent nation to maintain its neutrality during a war between two other countries, with each of which it had friendly relations. It was, in some respects, the controversy of 1812 over again, and it anticipated many of the debates of the World War. Cushing quoted many authorities in international law, demonstrating conclusively that strict neutrality would not be consistent with our allowing foreign recruiting in our cities. He pointed out, moreover, that we had a specific statute, — *Acts of Congress,* April 20, 1818, — forbidding this practice. Then, becoming a jurist rather than a lawyer he took broader ground:

"In truth, the statute in this matter is of but secondary account. The main consideration is the sovereign right of the United States to exercise complete and exclusive jurisdiction

within their own territory; to remain strictly neutral, if they please, in the face of the warring nations of Europe; and of course not to tolerate enlistments in the country by either of the belligerents, whether for land or sea service. . . . All which it concerns foreign governments to know is, whether we, as a government, permit such enlistments. It is bound to ask permission of us before coming into our territory to raise troops for its own service. It has no business to inquire whether there be statutes on the subject or not. Least of all has it the right to take notice of the statutes only to see how it may devise means to evade them. Instead of this, it is bound, not only by every consideration of international comity, but of the strictest international law, to respect the sovereignty and regard the public policy of the United States."

The course of Cushing's discussion admits of brief summarization, as follows: that, according to a settled principle of the law of nations, no belligerent can rightfully make use of the territory of a neutral state for military purposes, without the specific consent of that neutral government; that any such undertaking on the part of a belligerent is a hostile attack on the sovereignty of the neutral state involved; that Great Britain has, therefore, "committed an act of usurpation against the sovereign rights of the United States"; that all persons, not exempting foreign consuls, engaged in the undertaking of raising troops for Great Britain in America are "indictable as malefactors by statute"; and that a foreign minister who abets the enlistment of troops in this fashion is subject to summary expulsion from the neutral country. The case, as thus presented, is incontrovertible, and has become an established precedent for nations in similar emergencies.[1]

[1] An interesting sequel demonstrated the importance of Cushing's *Opinion* in international disputes. In 1862, an American agent undertook to recruit soldiers in Ireland for the Northern Army. The British Government, with a courtesy and shrewdness which fully

Cushing's views made a deep impression on Marcy, who at once called upon Crampton for an explanation, which the latter declined to give, feeling, no doubt, that he could count on Palmerston's support. Cushing was by this time righteously indignant at the brazen conduct of Crampton and the British consuls in eastern cities, and instructed the District Attorneys in Philadelphia and New York to institute proceedings against British agents charged with unlawful recruiting. In Philadelphia, Henry Hertz and E. S. Perkins were brought to trial before Judge Kane, accused of having violated the neutrality laws by hiring one William Budd to go outside the limits of the United States, there to be enrolled in the British military service. The District Attorney for that section, Mr. J. C. Van Dyke, wrote Cushing for instructions, and received the following significant reply:

"This government has, of course, addressed to that of Great Britain such demands of public redress and satisfaction in the premises as the national honor requires. But the Government of Great Britain, with extraordinary inattention to the grave aspects of its acts, — namely, the flagrant violation of our sovereign rights involved in them, — has supposed it to be a sufficient justification of what it has done, to reply that it gave instructions to its agents so to proceed as not to infringe our municipal laws; and it quotes the remarks of Judge Kane in support of the idea that it has succeeded in its purpose. It may be so. Judge Kane is an upright and intelligent judge, and will pronounce the law as it is, without fear or favor. But, if the British government has, by ingenious contrivances, succeeded in sheltering its agents from conviction as malefactors,

met the situation, collected the evidence, borrowed Cushing's *Opinion* of 1855, altered names and phrasing, and returned it with a brief comment to Seward, then Secretary of State. Seward could not well deny the force of this reply, and, with perfect frankness, admitted the indiscretion, disavowed malicious intent, and issued a forceful warning to all offenders.

it has, in so doing, doubled the magnitude of the national wrong inflicted on the United States.

This government has done its duty of internal administration in prosecuting the individuals engaged in these acts. If they are acquitted, by a deliberate undertaking of the British government, not only as a nation to violate our sovereign rights as a nation but also to evade our municipal laws, — and that undertaking shall be consummated by its agents in the United States, — when all this shall have been judicially ascertained, the President will then have before him the elements of decision as to what international action it becomes the United States to adopt in so grave a matter."

The tone of this letter was proof that the President had resolved to endure no longer the indifference of the British Government to our interests. The Attorney General once again had the upper hand in the cabinet. A few days later, on September 17, Cushing gave Van Dyke some additional instructions:

"I desire to make another suggestion in regard to the trial of parties charged with recruiting soldiers in the United States for the service of the British Government.

It is known that instructions on this subject were given by that government to its officers in the United States. We are told by Lord Clarendon that these officers had 'stringent instructions' so to proceed as not to violate the municipal law, — that is, to violate its spirit but not its letter. If so, these instructions themselves violate the sovereign rights of the United States.

But, in the meantime, every Consul of Great Britain in the United States is, by the avowal of his government, subject to the just suspicion of breach of law; while apparently he must have disobeyed his own Government or, in obeying it, have abused his Consular functions by the violation of his international duty to the United States.

In these circumstances, it is deemed highly necessary that the British consul at Philadelphia, or any other officer of the British Government, shall not be suffered to interfere in the trials, as he attempted to do on a previous occasion; that no letter of his

be read except in the due form of evidence; and that, if he have anything to say, he shall be put on the stand by the defense, in order that he may be fully cross-examined by the prosecution.

It is clear that he has no right, by any rule of public law, or of international amity, to be heard in the case by the court, otherwise than as a witness, whether enforced or volunteer."

The trial of Hertz and his alleged accomplice opened on September 21, closing a week later, after evidence had been offered that Crampton had given his agents detailed instructions how best to evade the United States laws, had advised them to be very careful not to arouse suspicion, and had pledged his word that "nothing unpleasant" should happen to them. Judge Kane, in delivering his charge to the jury, made a vigorous summing-up of the illegal procedure of the British Minister and consuls. On the evidence presented, Hertz was convicted and Perkins was acquitted. A motion for a new trial was then denied. Before the court adjourned, Van Dyke took occasion to read the two letters which he had received from the Attorney General, adding that he was permitted to say that the trial just closed had been authorized by the National Executive.

When the Cushing letters appeared, with his full approval, in the newspapers, they naturally caused a commotion in diplomatic circles. The London *Times*, on October 21, printed a long leading article, in which, while it assailed the "studied insolence of demeanor and intemperance of language" of the Attorney General, it also criticised the British Government for its "false step" in antagonizing the United States. Ten days later, the *Times*, while deploring the strained relations between the two countries, pointed out that England had seconded her diplomacy "by strengthening her West India fleet

with the ships that have arrived from the Baltic." It was a fact that a strong squadron had been ordered to American waters, on the flimsy pretext that protection was needed against a possible invasion of Ireland by an armed force of Irish-Americans. Nothing could disguise the true situation. The two countries had reached a crisis where any spark might start a conflagration. Caleb Cushing, it seems, was prepared for any exigency. On November 14, he wrote an editorial for the *Union*, drawing attention to the series of articles in the *Times* and denying any evil animus in the United States against Great Britain; but he added:

> "It is true we are a bold and martial people. . . . God forbid that another war should ever occur between the United States and Great Britain; but we confidently believe that, if such a war should occur, we could raise three hundred thousand men for the invasion of England with less trouble than she raises thirty thousand for the invasion of Russia."

It was a time when trivial incidents assumed colossal proportions. In the very midst of the controversy over recruiting, Crampton attempted to create a diversion by sending to Marcy a complaint which had been forwarded to him from the British Consul in New York, alleging that the bark *Maury* was being fitted out for the service of Russia against England, and specifically for the purpose of intercepting and capturing British mail steamers between Liverpool and Boston. Marcy, doubtless not without something of a twinkle in his eye, handed the documents to Cushing, who, in turn, directed District Attorney McKeon to seek information and prosecute the owners of the *Maury* if any cause for action could be discovered. Investigation showed that the vessel was being loaded for the China trade; that it mounted two small deck guns, supposed to be necessary because of the prevalence of

pirates along the route; and that the depositions sent had been full of gross inaccuracies and misstatements. In forwarding a memorandum of the case to Marcy, Cushing could not refrain from sarcasm:

> " It affords me pleasure to enable you to give assurance that the Cunard mail steamers may continue to enter and to leave our ports, without apprehension of being captured by the *Maury* and converted into Russian men-of-war for the prosecution of hostilities in the East Indies."

Again the vigilant Crampton, obviously eager to withdraw attention from his own activities, complained of an organization of Irishmen in New York, Boston, and Cincinnati, formed to aid and abet rebellion in Ireland against England. Cushing, in an opinion of December 2, 1853, declared that, while such a society was undoubtedly " a violation of national amity and comity, and an act of wrongful interference with the affairs of other people " there was, nevertheless, no law in the United States, — or Great Britain either, — to forbid such an institution.

As a consequence of several convictions secured in various eastern cities, recruiting had practically ceased by October, 1855, and Cushing directed District Attorneys to neglect some indictments which were still pending. The discussion of the subject between the two governments, however, continued. Clarendon complained to Buchanan that the American people had been hostile to Great Britain during the war and that munitions and warlike stores had been sold to Russia; Marcy replied, proving that American tonnage had transported a large proportion of English supplies for the Crimea. Clarendon then wrote Crampton a letter which was, in effect, an elaborate justification of the British Government and its representatives in the United States, but which evaded the question

of offering any satisfaction to this country. Marcy rejoined, on December 28, in a despatch of great length, which had been amended and strengthened by Caleb Cushing, in which he completely refuted Clarendon's arguments, pointed out that Great Britain had not yet made any apology for her conduct, and concluded by instructing Buchanan to ask for the recall of Crampton and the removal of the three offending British consuls, — Rowecraft, at Cincinnati, Mathew, at Philadelphia, and Barclay, at New York. The American press saw in this demand another triumph for the Attorney General.

Great Britain politely declined to dismiss Crampton; whereupon, on May 29, 1856, the President reported to Congress that he had sent the British Minister his passports and had revoked the *exequaturs* of the three consuls. The news did not reach London through official channels until June 13, and it was discussed two days later in the House of Lords. The *Times* and the *Daily News* came out at once with leading articles advocating the utmost caution. The truth was that Great Britain, exhausted by the hardships of the Crimean War, was in no condition for another conflict, least of all with a vigorous nation like the United States. Furthermore, as every well-informed Englishman knew, the British Cabinet had woefully mismanaged the situation. Crampton himself arrived at Liverpool a week or two later, and was accorded a warm welcome when he went up to London; but there was nobody who cared to protest against the treatment which he had received. After all, Marcy and Cushing had done nothing more than to maintain American rights. England had stepped beyond the bounds of international law, and we had taken her to task for her conduct. Once more the commonsense of both peoples had prevented a disastrous outcome.

Six years afterwards, Caleb Cushing, at the request of Edward Everett, prepared a pamphlet of twenty-two pages, dated August 14, 1862, entitled *A Memoir on the Subject of British Enlistments in the United States.* In opening his narrative, he said:

> "The dismissal of Mr. Crampton, by President Pierce's government, was an act, not of justice and right only, but of mere necessity; and therefore it could not be that in this we 'pushed the matter rather too far.' Instead of that event, and the incidents out of which it came, constituting insult of Great Britain by the United States, — on the contrary, those incidents were of themselves acts of insult of the United States by Great Britain."

Cushing went on to prove the consistency of his conduct by showing that Del Valle, the Mexican Consul at San Francisco, was prosecuted by order of the Attorney General and convicted of enlisting troops for the Mexican Government, and that William Walker, the notorious filibusterer, who had tried to recruit soldiers in San Francisco for the invasion of Mexico, was at once indicted by Cushing's direction and tried, only to be acquitted through the refusal of Dillon, the French Consul, to furnish some badly-needed evidence in his possession. In conclusion, Cushing denied the charge that Pierce, or any one of his cabinet, had been actuated by a desire "to insult, injure, or humiliate Great Britain" or to "make political capital out of a quarrel with Great Britain." His sole aim, he added, was "to maintain the sovereignty, the dignity, the domestic order, and the foreign peace of the United States."

The mention of Walker leads naturally to a discussion of "filibustering" and the helpful part played by Caleb Cushing in suppressing it. It was a period when unauthorized military expeditions into neighboring coun-

tries, especially those in Central America, seemed to be a popular pastime for adventurous spirits. Early in Pierce's administration, Quitman, former Governor of Mississippi and one of Cushing's Mexican War friends, had planned an invasion of Cuba, apparently with the private approval of Jefferson Davis and other Southern sympathizers; but in this case Cushing, who abhorred anything illegal, joined Marcy in opposing Davis, and Pierce was finally won over to the side of law and order. The President, on June 1, 1853, issued a proclamation, drafted by Cushing, warning the plotters that they would be prosecuted, and Quitman himself was actually arrested and placed under bonds to keep the peace.

The most elusive offender, however, was William Walker,[1] a pirate who would have been in his glory in the days of Captain Kidd. In 1853, he organized an expedition for the conquest of Sonora, one of the states of northern Mexico, but failed and surrendered himself to American troops. Tried under Cushing's orders in 1854, he was acquitted on the charge of violating the neutrality laws. In 1855, backed by some American speculators, he landed in Nicaragua with but sixty ragged followers, was joined by some natives, and, after several victorious battles, had himself elected President. In this office, he annulled, by decree, the existing prohibition of slavery. Pierce, acting on the advice of Marcy and Cushing, gave these acts no encouragement. There was a sharp cabinet division on the question, but Cushing took

[1] William Walker (1824–1860) was born in Nashville, Tennessee, studied both law and medicine, was a journalist in New Orleans and San Francisco, and practiced medicine in California. After his Nicaraguan expedition described above, he was finally captured while trying to create a revolution in Honduras, and summarily executed. He was a romantic figure, but his escapades were decidedly trying to the American Government.

issue with Davis and carried his point. On December 8, 1855, Pierce issued a proclamation warning citizens of the United States not to join in the "disreputable and criminal undertaking." When Walker sent one of his henchmen, Colonel Parker H. French, as "Minister and Envoy from the Government of Nicaragua to the United States of America," Cushing wrote McKeon, in New York, as follows:

"Col. French is entitled to diplomatic privilege in the United States only in a very qualified degree. He is not an accredited Minister, but simply a person coming to this country to present himself as such, and not received, by reason of its failing to appear that he represents any lawful government."

Early in 1856, Cushing directed McKeon to detain the *Star of the West*, a vessel alleged to be loaded with munitions for the Nicaraguan filibusters. Indeed in every case where suspicion arose, Cushing lent the power and authority of his office to investigate the charges and to suppress the illegal acts. It was not many months before Walker's arbitrary deeds stirred up an insurrection against his rule, and after Pierce had left the White House, he gave himself up to a United States sloop of war. Cushing had sustained the credit of the administration by refusing to countenance the escapades of a political bandit.

Enough has been said to show that, in his office as Attorney General, Cushing was extraordinarily active. In the estimation of old Washington residents, there had never been a cabinet member who devoted so many hours in a day to the duties of his position. A member of the opposition party, writing of him in 1855, said:

"Caleb Cushing probably performs more mental labor than any other man in the country, if not in the whole world. He

is incessantly at work after nature's demands are satisfied: food and sleep. I arose early this morning, and, after dressing myself, I thought I would saunter out and breathe the fresh air before breakfast. I directed my step by the Attorney General's Department, and there in front stood Cushing's old cream-colored horse, while the master was busily at work within. This was at the hour of seven, and he had broken his fast. No other cabinet officer reaches his post before twelve; consequently Cushing's close application enables him to discharge his duties with far more promptitude than the others. All the judges and members of the bar have the highest respect and opinion of his great legal capacity. He writes out with his own hand every opinion he gives."

In his first year as Attorney General, he prepared and argued for the United States seventeen cases, involving claims to the gross amount of forty-five million dollars against the public treasury. When he came to Washington, he found his department laden with an accumulation of unfinished cases, some of them of over thirty years' standing. It was Cushing's first task to clear up all the business bequeathed him by his predecessors, and to bring the office into some kind of order. Fortunately he had a clerk, Henry E. Orr, of Virginia, who was almost his equal in industry, and it was not long before the crowded files were cleared of rubbish and the mass of useless papers was removed to make bonfires. Cushing had simply applied business methods to his job. Rufus Choate, after a visit to Washington in the course of which he was for several days in consultation with Cushing, spoke of the latter's capacity for labor as being beyond that of any man he had ever known.

Cushing's most significant accomplishment as Attorney General was, however, his body of official opinions, which were more numerous and comprehensive than those of any other incumbent of the position. When questions

were referred to him by the President or by the department heads, Cushing did not, like his predecessors, confine himself to a brief statement of the results of his investigations, but usually presented a careful examination of the subject from every point of view. In the series entitled *Official Opinions of the Attorneys General of the United States, advising the President and Heads of Departments,* edited by C. C. Andrews, Cushing's contributions fill volumes VI, VII, and VIII, — three bulky books of 761 pages each, — and are noteworthy in both quality and quantity. He found it possible during his four years in office to build up almost a complete canon of precedents available for future incumbents of his position. Learned, in his scholarly work on *The President's Cabinet,* says, in referring to Cushing:

> " He left behind him a collection of official opinions that for extent alone has never been equalled before or since his day. . . . Looking back over a long life, it still seems fair to conclude that in no task did Caleb Cushing prove himself more useful than in that of the Attorney Generalship. He was the ablest organizer that the office has had since its establishment in 1789."

Cushing's first official opinion, dated March 12, 1853, merely pointed out, in answer to an inquiry from the President, that an Assistant Secretary of State must be appointed by the Executive, acting by and with the consent of the Senate. This was but the earliest, and one of the least important, of a long series of pronouncements on a great variety of topics. Among the decisions made by Cushing in the first months of his tenure of office are not a few which were and are contributions to American law. He settled the " exterritoriality " of military sites, like that at Harper's Ferry, occupied by the War

Department; he ruled on some intricate technicalities of extradition; he discussed, in the famous case of James Collier, the jurisdiction of Federal and State Courts, emphasizing the Federal authority with a vigor which would have delighted John Marshall; he defined the pardoning power of the Executive; he established the procedure of army courts-martial; and he examined into the complex regulations governing the sale of public lands.

In February, 1854, Cushing submitted to the President, in compliance with certain resolutions of the Senate referred to him for this purpose, a series of suggestions for enlarging and modifying the existing federal judicial system. With the rapid expansion of territory and increase of population, the country was, in 1854, inadequately provided with judges, and the organization, as it stood, had many defects. After indicating the powers of Congress in altering the judiciary, Cushing went on to explain the operation of the existing system, stressing its many weaknesses. The circuit plan, as he readily demonstrated, was not being adequately carried out, for the obvious reason that there were not enough Supreme Court judges to cover the entire country; and often district judges were compelled, in default of the presence of a Supreme Court judge, to hold circuit court themselves. Passing briefly over several suggested methods of reform,[1] Cushing then outlined a scheme of his own, providing for the appointment of nine assistant circuit judges, who should divide the circuit business with the judges of

[1] On several previous occasions, — notably in 1826, in 1835, and in 1844, — there had been attempts to reform the judiciary system by establishing additional circuits, but they had been defeated in each instance. Proposals to relieve the Supreme Court judges of circuit duty and keep them in Washington had never met with much popular favor.

the Supreme Court. Under Cushing's plan, each district judge would be confined to his own local duties; while either the Supreme court justice or his assistant circuit judge could hold circuit court. Cushing's proposal had many merits, but it was not favored by the anti-slavery men, who feared that Pierce, if he had the opportunity, would make the new appointments chiefly from the slavery ranks. Not until 1869 did the system, substantially as Cushing had outlined it, pass Congress and go into operation, the nine appointments being made by President Grant.

Exactly a year after taking his position as Attorney General, Cushing performed another valuable service by submitting to the President a full historical discussion of the functions of his office. After reviewing the circumstances leading to the establishment of the various executive departments, he pointed out that the Congressional Act of September, 1789, imposed upon the Attorney General two responsibilities: to prosecute and conduct all suits in the Supreme Court in which the United States is concerned; and to give his advice upon questions of law, when asked to do so by the President or by any of the heads of departments. In this second capacity, his function is *quasi* judicial. There is no statute declaring what importance or authority the opinion of the Attorney General shall have; but the practice has been in every case to follow it, and thus to build up an important array of precedents in governmental procedure. At different periods, the Attorney General has been invested with certain special duties, some of which Cushing discussess in detail. He then shows that, in nearly all his duties, the Attorney General is, "either directly or indirectly, and by statute, either express or implied, the administrative head, under the

President, of the legal business of the government." He finally makes certain suggestions: that the Attorney General should be required to make a periodic report to the President, and, through him, to Congress, of the business of his office; that the President should assign to him the prosecution of all suits in which the United States is ultimately concerned, but in which it is not a party of record; that the granting of pardons should be delegated by the President to the Attorney General; and that all commissions of public officers of a judicial character or relation should come from the Attorney General's office, and that their accounts should be supervised by him.

Cushing's exhaustive analysis of the origin and duties of his position has been accepted by later incumbents as constituting the authoritative statement on the subject, and ought to be viewed as a notable public document. Cushing was, as this clearly shows, the highest type of public servant, — intelligent, industrious, tireless, systematic, progressive, and interested in his routine and special work.

There was, indeed, no subject too technical, no problem too abstruse, for the assiduous Cushing. He settled matters connected with the army, such as the privilege of *brevet* rank, the civil responsibility of military officers, the limitations of courts of inquiry, and the enlistment of minors. He made a long report dealing with the functions, privileges, and authority of ambassadors and other public ministers; he presented a detailed study of the relation of the President to the various executive departments; and he took up the whole subject of our judicial jurisdiction in China, laying down again the principles for which he had contended in 1844. His mind seemed to have the power, always rare, of getting at once at

the heart of a topic, and distinguishing instinctively between its essential and its trivial phases.

It was his fortune to make one decision of far-reaching importance to our civilization. Dr. William G. Morton, the dentist who had discovered the secret of etherial anesthesia, had applied to the President for indemnification because of the alleged violation of his patent rights by the use of his gas in the army and navy, and in the Marine Hospital. The petition having been submitted to the Attorney General, Cushing, on December 24, 1856, submitted a formal report, the substance of which is to be found in the following paragraphs:

"I think that, in the matter out of which came this patent, a significant public service was performed, honorable to the parties and to their country. It was not the *discovery* of the anodyne effect of the inhalation of ether or of other anesthetic agents. It was not the *invention* of the performance of surgical operations on the human body while reduced to temporary insensibility by anesthesia. These were ideas familiar for ages to men of science, and the invention or discovery of which no more belongs to any individual as property, than electricity; the fusibility of metals; the specific medicinal effects of opium, cinchona, mercury; the capacity of sleep, which Cervantes speaks of as a valuable invention; or of any other of the ascertained qualities of matters, functions of animal life, or laws of inanimate nature. Neither of those things constitutes the honorable service performed in the present instance. That service consists in the suggestion and execution of a series of experiments, which resulted in demonstrating the safety and utility of employing, more frequently than had been done heretofore, known agents of anesthesia, by known methods, in order to achieve the known end of facilitating surgical operations. That was a great good, and worthy of due honor. Whether it involved anything patentable or not, from which to derive pecuniary profit, is a question of specific agents and of specific agency. If it does, that relation of the case belongs to the

lower category of mechanical appliances, not to the higher one of great scientific discoveries.

There could be no question of patent in the successive steps of discovery and demonstration, which, beginning with Copernicus, continued by Kepler and Galileo, and consummated by Newton, unfolded the mysteries of the law of gravitation and the composition of the solar and planetary systems of the universe.

So, there can be no patent for the expansibility of heated acqueous vapor, nor for its application to use as mechanical force; but there may, for specific instruments or methods of such application.

In like manner, electro-magnetism cannot be patented, nor even its use as a means of communication; but particular means of so employing it may be patented. The same distinction exists with regard to the principle of anesthesia, or its use in surgery, and the specific manner of producing or applying it."

The verdict, so rooted in sound reason, had an application to a long series of similar discoveries which were to come within its scope. Through it, Cushing showed himself a philosopher and jurist as well as an attorney. The conclusion that the patent for anesthesia was invalid was fraught with good for humanity.

Many of the opinions rendered by Cushing can be spoken of only briefly, and still more cannot be touched upon at all, — although there are few that would not require full treatment in any technical treatise on his skill as a lawyer. He discussed on several occasions matters pertaining to the principle of State Rights. In 1856, at the request of Guthrie, Cushing examined the so-called right of "Eminent Domain," in connection with the refusal of a certain Colonel Seabrook to sell Seabrook's Island, in South Carolina, to the United States as a site for a lighthouse. "Any state," said Cushing, "can take the land of its citizens for public use by special act and without intervention of jury, but on pay-

ment of reasonable indemnity ascertained by commissioners." If a state consents to the purchase by the United States of certain lands within its borders, jurisdiction is in general secured to the United States; but this is not necessarily the case when a particular state reserves some jurisdiction over the land in question. The Attorney General, in a later opinion, gave it as his view that, if South Carolina definitely refused to cede jurisdiction in the lighthouse land to the Federal Government, the President could not lawfully expend money on this site, for public uses. This is a variation of the State Rights doctrine which indicates that Cushing had much sympathy with the Southern point of view.

There were other cases, also, in which Cushing's decisions indicated a swing towards the South. In 1857, he ruled that a Postmaster is not required by law to deliver mail which is calculated to produce disaffection, disorder, and rebellion among the colored population of a state. The Postmaster of Yazoo City, Mississippi, refused to transfer a copy of the Cincinnati *Gazette* to one A. Patterson, alleging that it contained propaganda of a dangerous kind. It was Cushing's contention that the postmaster was not compelled to be knowingly the distributor of incendiary literature.

On March 4, 1857, Caleb Cushing sent in his last official document as Attorney General of the United States. It was merely a brief report, stating that he had settled all the cases of private land claims in California; but it closed with a kind of valedictory:

"It is a matter of sincere satisfaction to me that this branch of the public business, — a branch of special and exceptional character, and of great responsibility, as involving all the land titles of the State of California, — that this, which in effect commenced on the 3d of March, 1853, has reached its con-

clusion on the present day, that is, in the comparatively brief term of but four years, and in the course of one and the same administration of the Federal Government and of the office of Attorney General."

Certainly no one begrudged Cushing the just pride which he felt in his cabinet record. In an office which everybody had considered of no particular importance, he had found almost unlimited possibilities for development, and he left it with a reputation enhanced by his successes. His training as a lawyer and judge, his long experience in legislation, his intimate association with great men, had all provided him with a background which was of incalculable value to the government. Pierce himself said, at a later date, that Cushing could have filled any place in the cabinet with as much ability as he did that of Attorney General, and that his eye ranged over all the affairs of state.

On at least one occasion, Cushing, by his tact, prevented a rupture in the cabinet ranks. A quarrel had arisen between General Winfield Scott and Jefferson Davis, as to the jurisdiction and authority of each. There is no need here to revive the petty details of this controversy, which delighted Washington gossips for some months. General Scott's accounts during the Mexican War had not satisfied the Treasury officials, and were passed on by successive presidents, — Polk, Taylor, and Fillmore, — as an unwelcome legacy to Pierce. When the petition of the old general was presented once more in 1855, the papers were all turned over to Cushing, who proceeded to make something more than a perfunctory investigation. Davis, Scott's enemy, was much chagrined at this disposition of the case and promptly sent in his resignation; but Cushing's personal statement of the circumstances to Davis was so convincing that the latter

apologized and withdrew his resignation before Pierce had time to consider it. Cushing's *Opinion* was entirely in Scott's favor, and the general eventually received the large sum which was his due. More than that, Franklin Pierce's cabinet remained intact.

Caleb Cushing was, at this period, in the prime of his physical and mental powers. A despatch from Washington in October, 1855, refers to him as being in his blooming meridian, "apparently good for many years." His former recurrent attacks of ill health had now diminished in number, and he was seldom inconvenienced by sickness. Despite his enormous labors and the long hours spent at his desk, he continued hale and strong. His spare figure had taken on more flesh and he had acquired a kind of stately dignity so that he seemed a real personage. There was something in his clear, piercing eye and resolute jaw which commanded respect. His speech was still slow and deliberate, and he had, like Dr. Johnson, a habit of framing his sentences completely before uttering them. But when he was angry, — and his temper was sometimes rather irascible, — his remarks had an explosive quality which was unmistakable.

One contemporary description, from a source not altogether friendly, gives an idea of the impression which Cushing made on the platform:

"His face is smooth, beardless, whiskerless; oval in form and slightly angular in profile. Underneath these half-drooping lids are the windows of his soul. Look in. You cannot. The glass is not clear, or there is no light within. There is the difficulty. The gentleman is not willing that you should see into those 'chambers of imagery.' The curtain is studiously drawn, and you strive in vain to read Mr. Cushing through his eyes. This you soon feel; and the next thought is, that his ability of concealment is more than equal to his other abilities, which are confessedly great. Prosecuting your study, you ob-

serve a quiescent, self-complacent expression resting upon that oval countenance, whether natural or artificial you are at a loss to decide, which speaks, as plainly as though it was written in lines of light, of ambitious aspirations and consciousness that he can, sooner or later, reach the goal and attain the object of his ambition.

But the gentleman is on his feet, and has commenced speaking. The first sentence is the lifting of the sluice of a pent-up lake, and, as the flood-gates are gradually raised, the stream of eloquence gathers volume and strength. But it is always under command. The occasion does not demand his greatest powers as an orator, but it is plain that he does not intend to lose such an opportunity of making an impression upon the people. He studies his words, compresses his thoughts, and delivers them with energy. The twitching of the facial nerves, and the scarcely perceptible quiver of the whole frame, betray that the speaker has an aim, and is intensely bent on it."

When one allows for the underlying irony of political antagonism, he will find in this analysis several of Cushing's peculiar traits: his superficial passivity, hardly concealing the nervous tension beneath; his concentration on the task in hand; and his power of dominating an audience by his personality. Actually he was very restless, and when not engaged in some definite business, would move here and there, as if surcharged with electricity; but in court or in conference, he kept himself more under restraint, so that his coolness of manner and his precision of utterance appeared remarkable.

For the first time in some years, Cushing began to show an interest in social affairs, becoming what we should now term a popular "diner-out." Polished in manners, good-looking, and agreeable, he was welcomed in the best circles. When the conversation dealt simply with gossip, he usually sat in silence, for he had no small talk; but when a matter of real importance was raised, he could discourse at length, to the admiration and delight of the

guests. His name was connected now and then with that of some Washington belle, the one most attractive to him being apparently Miss Emily Harper, granddaughter of Charles Carroll, of Carrolltown, and daughter of Senator Robert Goodloe Harper. Marion Gouverneur, in her charming book of reminiscences called *As I Remember*, says of Miss Harper:

> "The marked attentions paid to her by Caleb Cushing, then Attorney General under Franklin Pierce, were the source of much gossip, but she seemed entirely indifferent to his devotion. I once heard him express great annoyance after a trip to Baltimore because he failed to see her on account of a headache with which she was said to be suffering, and he inquired of me in a petulant manner whether headaches were an universal feminine malady."

Mrs. Gouverneur says that Cushing accompanied Miss Harper to the former's wedding, and that he especially commented on that portion of the service which reads, "those whom God hath joined together, let no man put asunder."

Cushing formed a close friendship with the handsome Madame Calderon de la Barca, wife of the Spanish Ambassador, at whose home he revived his acquaintance with Castilian, which he spoke with a facility little short of marvellous in one who had spent only a few weeks in Spain. Another favorite resort of his was the home of Mrs. Eames, on the corner of H and Fourteenth Streets, where that charming hostess maintained a salon, which was frequented by Everett, Choate, Sumner, Guthrie, and other well-known Washingtonians. Cushing's own residence was on the northeast corner of H and Seventeenth Streets, but he did no entertaining there, feeling that a dinner-table without a lady in his household to preside over it, would not be attractive; and there was

no lady in his family at that time upon whose assistance he could call.

As a consequence of Cushing's political leanings at this period, his associates were very largely Southerners, in whose warm hospitality he found relief from the cold looks with which he was received by most of the New England representatives in Washington. His private secretary was Richard S. Spofford, of Newburyport, an affable and talented young gentleman, who enjoyed accompanying his chief to social functions. The friends in whom Cushing most delighted were men like the scholarly Senator Clay, of Alabama, and Jefferson Davis, whose charm was irresistible. Meeting them constantly at dinners and receptions, Cushing gradually became more tolerant of their views and could understand their peculiar local problems. He never lost his instinctive dislike of slavery,[1] but he did not wish to set himself up a *censor morum* for plantation owners who, as he knew, were naturally courteous, law-abiding, and kind-hearted.

There were some bright moments during Cushing's tenure of office. The great and wise gods must have smiled ironically when, in April, 1856, he, with many other Washington statesmen, journeyed by special train to the Slash Cottage, Hanover County, Virginia, there to celebrate the birthday of Henry Clay. It was a gala occasion. Guests arrived from far and near to join in

[1] Cushing was invariably generous to individual slaves. Judge Russell, of Boston, used to tell a story illustrating Cushing's liberality. A certain colored man, Dr. John S. Rock, of Boston, who found it imperative to go to Paris for a surgical operation, was unable to secure a passport, even through application to the Massachusetts Senators. In despair, he called on Judge Russell, who appealed to Cushing. The passport arrived by return mail, with a request from the Attorney General to keep the matter a secret. If the story had leaked out, Cushing would have had a difficult time of it.

the festivities. Sumptuous preparations had been made, including the securing of two oval-shaped bowls, five feet by three at the top, and three feet deep, in which had been poured divers stimulating beverages to form a perfectly blended toddy. The presiding officer was the drunken John M. Botts, who had once tried to "head Captain Tyler." In this strange assembly, Cushing was the representative of the President of the United States, and accordingly was called upon for the first speech. He could be trusted to do the tactful thing, as was discovered in his opening remarks:

> "Mr. President, I see around me gentlemen whom, in the pursuits of life, I have met in all the diversities of public opinion which our free institutions admit of; I see around me gentlemen who differ and will continue to differ from me in opinion; but, thank God, we can distinguish the high intellect, the patriotic principle, the lofty emotion, and generous impulses of public good and majestic eloquence; we can distinguish and remember all this, even in our rivals, — even, if it be possible to apply such language to the dead, our *enemies*. If we could not do that, we were unworthy of the name of Americans."

It was a convivial party, and, before the night was over, every animosity was forgotten and every prejudice abandoned. Caleb Cushing, however, was no reveller, and, after having met the demands of the occasion, he went quietly to his room to meditate on the strange vicissitudes of history.

The time was now drawing near for presidential nominations. Pierce himself would doubtless have accepted a second term, and Cushing favored his aspirations. Buchanan also, in spite of his feeble protestations to the contrary, had his eye on the White House, but he did not have the full support of the Southern wing of the Democratic Party. Unfortunately for Pierce's prospects,

the Northern states, especially Pennsylvania, did not like his connection with the Kansas-Nebraska Act. Buchanan, a Pennsylvania man, had been in Great Britain when that measure was passed, and was not tainted by it. At the Cincinnati Convention, Buchanan started with 122 votes to Pierce's 135, Douglas being a poor third. Pierce steadily lost ground, and Buchanan correspondingly gained strength. On the fourteenth ballot, Pierce withdrew his name. On the sixteenth, Douglas telegraphed, urging his supporters to vote for Buchanan, who was then nominated by a unanimous vote. The conservative element in the Democratic Party had triumphed. It was already evident that Caleb Cushing and the radical leaders would not dominate the next administration.

With outward loyalty and equanimity, however, Cushing watched the campaign, speaking occasionally in his own district but refusing to be diverted in general from his official business. The birth of the Republican Party stirred in him some uneasiness, but he apparently had no conception of the large vote which its candidates were to receive. In the excitement of the fall election, Pierce was almost neglected,[1] and everybody was prepared to hail the new king. The result was close. Buchanan had a majority of the electoral vote, but a minority in the popular vote, the joint totals for Fremont and Fillmore outnumbering him. It was, however, a decisive victory for those conservatives who wished slavery agitation to cease.

[1] Cushing's classmate, George Bancroft, wrote Marcy, September 24, 1856, making a scathing indictment of Pierce. Bancroft said that he had no confidence in any of Pierce's cabinet except Marcy and Guthrie, and went on to add, — "The South never received so deep wounds as it has received from Pierce and Cushing, and the other representatives of a debauched Democracy who became its flatterers. . . . Pierce died of Jefferson Davis and Cushing."

The report reached the newspapers that Cushing would be in the new cabinet, but he was too well acquainted with James Buchanan and his sentiments to give this matter a moment's thought. In January, 1857, he had an attack of throat trouble, which incapacitated him for several weeks. When he had recovered, the Pierce administration was almost over. With scrupulous politeness, Cushing attended the inauguration ceremonies. On that evening, while the grand ball was being held in the City Hall, Cushing gave a dinner to the Charlestown City Guards, then in Washington for the festivities, and to other Massachusetts citizens who happened to be in the capital. The echoes of the Crampton affair could still be heard in the praise which speaker after speaker bestowed upon the retiring Attorney General for his vigor in upholding American rights, while he sat smiling and imperturbable through the unceasing flow of oratory. When he was called upon, he delivered a eulogy of Franklin Pierce, and, as a private citizen, pledged himself to the unceasing advocacy of Democratic principles.

Cushing's successor, Jeremiah S. Black, was delayed in reaching Washington, and asked Cushing to continue to act as Attorney General for a week or two under Buchanan. Cushing answered:

"I had not intended to leave Washington for several weeks, and therefore it would not be personally inconvenient to me, in any respect, to continue to be your substitute for the time you suggest; and it would of course give me pleasure to oblige you in this or any other matter. I well understand the nature of your present engagements, having myself, in similar circumstances, been transferred from the courts of Massachusetts.

Meanwhile, it seemed to me fitting that the President should be consulted on the subject. Accordingly, I have shown to him your letter; and he has been pleased to express, in explicit

and most courteous terms, his desire to have me accede to your request. That relieves my mind of all hesitation.

I shall, therefore, until I hear from you, remain, but simply to prevent interregnum, and not assuming to perform official acts, except such, if any, as may be specially required by the President or the new heads of Departments."

Black did not arrive until March 11, when Cushing personally accompanied him while he took his oath of office and then initiated him into the mysteries of the Attorney General's desk and duties. For a few weeks longer Cushing lingered in Washington, hoping to escape the damp New England spring which for four years he had avoided. He then made his way along the familiar route back to his old home. When April 23 dawned in Newburyport, the city was adorned with banners, and more than ten thousand people assembled at the station to greet him. As he drove to the City Hall, multitudes lined the sidewalks and cheered the well-known figure. Never had he received such a tumultuous ovation. And then, in the huge auditorium, inspired by the throng of friends, he made one of the great speeches of which, at his best, he was capable.

His theme on this occasion was "imperialism," — the "manifest destiny" which was driving us on, in the "March! March! March!" of the Union, to spread over the North American continent. This particular doctrine has never been given a franker expression than in Cushing's words:

"In our conquest of nature with our stalwart arms and with our dauntless hearts to back them, it happens that men, nations, races, may, must, will, perish before us. That is inevitable. There can be no change for the better save at the expense of that which is. Out of decay springs fresh life. The tribes of Indians who hunted over the land without occupying it, retire before us like the hunted deer and the buffalo themselves,

— deeper and deeper into the innermost recesses of the continent. And the Hispano-Americans, wasting away by apparent incapacity of self-government, are suffering one province after another of theirs to relapse into pristine desolation, and thus to become prepared to receive the people and the laws of the United States."

He went on, with characteristic courage, to reprove Massachusetts and her citizens for their failure to abandon smaller issues and take a post "proudly in the van of the march of the Union":

"Must it be so forever? Will Massachusetts choose always to be the drag or brake on the wheels, and never the motive power itself? Will she constantly struggle to clog the march of the great event? . . . You may guide or at any rate go on with the fatal movement. But you cannot stop it; nay, whether you will or not, you are in it and of it; and must move on with its motion, either leading or led, — for if not leading, you will be led, — in the councils of the Union."

In another section of this same address, Cushing referred bitterly to the attacks which had been made on him because of his change in party allegiance and defended himself against the charge of inconsistency:

"It is said that some not over amiable persons reproach me with want of unbroken continuity of party relation, which is odd enough in view of all the *chassez croisez* steps of party in our day, with few eminently conspicuous public men who have stood in one and the same attitude all their lives.

It is said also that other hypercritical persons impute to me tolerance for men of different shades of opinion regarding the political theories of the moment. Be it so. On the high road of public life are strewn broadcast the miserable fragments of party doctrines shattered by overstrain, like the dead mules and broken down wagons in the tracks of an advancing or retreating army. Theorems of mathematical precision are good in books of geometry, but not in the conduct of great affairs. Men of action are the masters, not the slaves of doctrine. What

the world needs, demands, and will have is more of punctual statesmanship, and less of bigoted exclusiveness of doctrines. . . .

He to whom it never happened to think or know something to-day which he did not think or know yesterday, must have been born omnisciently infallible, or has not yet advanced from the innocent simplicity and petulant wilfulness of infancy. I am not so humble as to admit that my condition is the latter, nor so presumptive as to pretend that it is the former, of the opposite categories."

As a justification of his conduct, — if, indeed, it needed any justification, — this statement was quite sufficient. Like Emerson, he believed that "A foolish consistency is the hobgoblin of little minds." He never again thought it necessary to refer to the alteration in his political views.

Cushing spent the summer securing some badly-needed rest and recreation, far from the battle-center of parties. As soon as his reception in Newburyport was over, he planned another trip to the Falls of the St. Croix, in Minnesota, where he expected to meet several western bankers for a conference on some speculations in which he was interested. On May 7, Robert McClelland wrote Pierce from Detroit:

"Cushing passed through this city a few days ago. I saw him and made him promise to spend a day or two here on his return. His address to his 'home friends' is most admirable. If he would only, at all times and upon all occasions, act as he there talked, what a great man he would be! I never read anything emanating from him, so elegant, so philosophic, and powerful. It is certainly one of the great productions of the day."

On June 5, Marcy,[1] in a note to his friend, Berret, said:

[1] Only a month later Marcy died, quite suddenly, in his bed, worn out, it is said, by the labors of his cabinet service.

"I have not heard directly from one of my colleagues since I left Washington. I casually heard of Cushing a day or two ago; he was for a brief time seen on a steamer on Lake Champlain, but soon mysteriously disappeared, and no one could tell whence he came or whither he went. By-the-bye, I have reread his Newburyport speech, — or oration, as the *Intelligencer* calls it, — and much admire its ability and learning, but of its orthodoxy I have not quite so clear an opinion. The speech does him credit."

One more letter, from McClelland to Pierce, on October 21, from Detroit, has this passage:

"Mr. Cushing passed through this city twice, and I had the pleasure of seeing him. His recent speeches I have read with delight, and had them favorably noticed. He is most happy in these efforts, and seems now to be floating beautifully upon the surface. I have no doubt of the success of Webster and himself. A mind like his must be appreciated, and besides his mind, his knowledge of the law and legal principles, his general intelligence, application, and attention to business, will make him an ugly customer as an opponent, and a most reliable man for a friend."

The reference in this letter is to Sidney Webster, Pierce's former private secretary, with whom Cushing had arranged to start a law partnership in Boston. When Cushing returned to Massachusetts early in October, however, he found a gubernatorial campaign in progress, in which Beach, the Democratic candidate, was running against Henry J. Gardner, who had been elected by the "Know Nothings" for four successive terms, and Nathaniel P. Banks, now a Republican. Reluctantly Cushing promised the Young Men's Democratic Association that he would give a noon-day address in Faneuil Hall, in the interests of Beach. On October 27, despite a heavy rainstorm and the inconvenient hour, a great throng gathered to hear Cushing speak, — a throng like

that which had greeted Webster in 1843. Like Webster, too, Cushing had come back to justify his action in running counter to public opinion in New England. His address, which covered nearly two hours, was read largely from manuscript and was throughout an appeal to reason.

He began quietly with a reference to the historic associations of Faneuil Hall and a plea for a fair hearing. He then entered upon a brief defense of the Pierce administration, in which he maintained that, in its every measure, there was "due regard to the interests and honor" of Massachusetts, and that "there never was an act of questionable rectitude to cast so much as the shadow of a stain upon the white ermine of that Administration."

With the "Know Nothing" Party, represented by Governor Gardner, Cushing expressed no sympathy. Our public liberties, he said, were in no imminent danger from an influx of the Teutonic and Celtic races; opposition to Germans and Irish, as citizens, is clearly inconsistent with pleading for the political equality of the negro; the "American movement," so-called, is, like the Antimasonic agitation, "incapable of perpetuity of political organization." For these reasons, Cushing urged his audience not to waste their votes in a lost cause.

He then paid his respects to the newly-formed Republican Party, whose leaders he accused of exploiting emancipation sentiment in the North and of placing themselves "on the insulated ground of sectional jealousies." Banks, said Cushing, was the candidate of "professional philanthropists," whom he proceeded vividly to characterize:

> "Of course, not co-operating with others in the practical business of government, they are very much one-sided, dogmatic, violent in their language, and not sparing of personal crimination and denunciation of all the rest of the world, and especially

of any others in society, who, differing from them either much or little, happen to be conspicuous in public affairs, or directly responsible for the legislation of the State or the United States. In a word, they are impracticable zealots of a single idea. . . . These gentlemen assume as theory, and seek to establish as law, the equality of Africans and Americans. It avails nothing to them that the two races are unequal by nature, and that no laws can make them equal in fact. . . . Of course, they aim to bring about the emancipation of the colored laborers of the South. . . . To accomplish this, or at least to free themselves from association with slave labor, and as the only political means of attaining this object, they propose the dissolution of the Union, and the organization of a Northern republic. . . . The power of abolitionism is paralyzed for evil as well as for good by its recognized antagonism to the Constitution."

Naturally the Bostonians awaited with interest his references to the Kansas issue. The Missouri Compromise, he said, was "a measure of equal justice to the opinions of both sections of the Union"; but a series of subsequent decisions in the Supreme Court made it clear that such acts of Congress, — "restricting in advance the legislative power of a State, as to slavery or anything else," — are contrary to the Constitution. Thus, when the moment came for organizing Kansas, the Missouri Compromise "had become a dead letter on the statute book." Cushing went on:

"To repeal it expressly was not an act of necessity, but of sincerity, of good faith, of frankness, of manliness; and it was done. Still, the *express repeal* changed nothing in the legal relations of the subject; it did but leave the question of slavery, in the incipient state, just where by the decisions of the Supreme Court it was placed, that is, in the hands of the people. That is the doctrine, not of squatter sovereignty, but of popular sovereignty within the ranks of the limits of the Constitution."

Free labor is, he admits, more productive than slave labor, and, in an open competition of colonization, free

labor will undoubtedly win. To leave the Kansas territory open to such a fair competition is, then, not to extend slavery but simply to let the people make their own decisions. As for the operation of the Kansas-Nebraska Act, it has been not unsuccessful:

"That there have been disorders in Kansas, illegal voting, acts of individual violence, — is true; it was to have been expected from the circumstances. . . . But the magnitude of these disorders has been greatly exaggerated for effect. . . . The troubles in Kansas are not half so grave as the troubles in British India."

Following the same line of thought, Cushing gives to the "Dred Scott decision" only two paragraphs, maintaining that the Supreme Court, in declaring Scott not a citizen of the United States, was merely reaffirming a familiar doctrine, and that even Northern states had not seen fit to make negroes citizens within their borders. In closing, Cushing, speaking with unusual impressiveness, urged his listeners to reject decisively the sectionalism represented by Banks and the Republicans:

"No, gentlemen of the Republican party, I defy you to establish permanently in this Commonwealth, that impossible policy of rancorous and vindictive hatred of all the white men of the South, and of all the white men of the North who refuse to join you in hatred of the South. You may attain power in the State of Massachusetts, from time to time, but never by your own strength. . . . It is only by a series of unstable coalitions with other parties, each succeeding one more deceptive and transitory than the last, that you will ever rise even to the appearance of power. . . . You may be great in a single state, but with a greatness which looms out luridly from the mists and gloom of sectional discord and strife, — and with names never destined to swell the pealing anthem of the glories of the United States. . . . You, the people of Massachusetts, do not, in the inner chamber of your hearts, approve, and will not, upon con-

sideration, adopt, this abominable theory of sectional spite and hate. You will, in the end, if not to-day, repel that policy with scorn and horror. Before that time of sober judgment comes, I, who stand for the Union, in its letter and spirit, — who will die in the breach rather than 'let it slide,' — I may be struck down by the tempest of party passion, but others, better and more fortunate, will rise up to fill the gap in the ranks of the sacred phalanx of the soldiers of the Constitution. Man is feeble, mortal, transient; but our Country is powerful, immortal, eternal."

This speech alone would be sufficient to reveal Cushing's untrustworthiness as a political prophet. Even under the ominous shadow of the Civil War, he could not see what the real issue was to be. Within five years, he himself was to be a member of that party which he had so severely castigated; and it was to control the destinies of his state and his nation for the last eighteen years of his life.

The Faneuil Hall address was widely read and discussed, being accepted for the time as good Democratic doctrine. There are those still living who can recall the thrill which it brought among the audience. One of those present that day wrote:

"The personal appearance of Mr. Cushing is very superior and impressive. He is large, symmetrical, and very free from all unassuming airs, — taking little or no notice of things about him, he appears intensely interested in his own thoughts. As a speaker, he is always to the point, expressing himself in words of masterly fitness and periods, — the perfection of rhetorical skill. He presents his subject in its strongest and grandest aspects. His style of delivery is full of that intenseness and energy which characterize the workings of his mind."

Even opposition newspapers vouched for the attention of the audience and the earnestness with which they hung

upon his words. He had tried to do his best, and the people appreciated the careful preparation which he had made for them.

Four days after his Faneuil Hall speech, Cushing spoke at a Democratic gathering in Newburyport, to friends who seemed never to tire of hearing him. His main object was to present a technical legal defense of the Kansas-Nebraska Act and the "Dred Scott decision." It was his contention that the settlement of this famous case by the Supreme Court "determined no new principle, but merely accepted, and applied to a new case, a principle long since thoroughly and fully settled in other cases." Referring to the Kansas controversy, he once again expressed his full approval of the measures initiated by Douglas:

"I accept, therefore, my share of present and future responsibility in regard to the action of the Executive of the United States, in the matter of Kansas. I know it was the purpose and the anxious endeavor of the President of the United States, as it was of the Secretary of War, to secure to the proper inhabitants of Kansas perfectly fair play in the government of that territory. I think it was not their fault, if anything in derogation of this, or any disorder of whatever sort, occurred there; but that it was the fault of the excited passions of the hour, those passions being influenced, not only by outside agitators, aid companies, border ruffians, and what not, but still more by the mischievous intervention and systematic agitation of parties in Congress, hoping and laboring, by means of this question, to drive from power the Democratic Party and install the Republican Party in its place. . . . Whether it was good policy or not, on the part of the late administration, to do as it did in this respect, it is of no consequence now save as a matter of history. I do not merely say it was right on the part of the Adminstration to do as it did, but that it was morally impossible for it to do otherwise; for the Administration had no power to roll back the current of the decisions of the Supreme Court. . . . I repeat, that I accept, without one thought of misgiving,

my share in the responsibility of the last Administration in that respect. . . . I deny that in this measure President Pierce was guilty of any departure from the provisions or principles of his inaugural address. I deny that he, or any act of his, this or any other, reopened the slavery agitation. I say that agitation was reopened by those who conceived that, upon its turbulent waves, an opposition candidate for the presidency might be carried up to the White House."

Cushing's argument for the justice of the "Dred Scott decision" was, from the legal aspect, a brilliant example of special pleading, such as a clever lawyer might produce for a client. Its weakness was obviously its complete ignoring of the moral features of the problem. Cushing never went so far as to assert that slavery was right, but he had come to view it as an evil which must be tolerated and probably could not be removed. His position was well expressed in one paragraph of his Newburyport speech:

"It is no easy task, you perceive, to reform the world, to abolish ignorance, poverty, vice, and crime. Let him who is confident of his virtue look up some erring brother within reach, and try the individual experiment. He will find it an arduous task. How much more arduous, then, the task of changing the social condition and the habits of nations and of whole races of mankind."

To put it in another way, Cushing sympathized with the black man held in bondage, but believed it to be impossible to remove his chains. Looking upon slavery as an issue in practical politics rather than in ethics, he saw chiefly the difficulties involved in any attempt to abolish it. He insisted, moreover, on the right of each individual to establish and regulate its own social institutions. Of the humanitarian spirit which aimed at free-

ing the slave, Caleb Cushing could see only the fanatical side.

Cushing's defense of the Pierce administration brought him from Franklin Pierce himself a letter of much historical value. It is dated "Andover, Mass., Nov. 4, 1857":

"I congratulate you upon your noble speeches delivered at Faneuil Hall and at Newburyport. In ordinary times they could hardly fail to produce a powerful effect upon the public mind. As it is, we must probably wait for a few months before sound reason and patriotic sentiments will reassert their supremacy over the spirit of extravagance and mischievous fanaticism, which has so perverted the judgment of many good men in New England. I was particularly gratified by your vindication of Gov. Marcy from imputations which could only cast discredit upon his memory. Your exposition of his views and action in relation to Kansas was timely and just.

He sustained me firmly, not only while the bill for the organization of the territories of Kansas and Nebraska was pending before Congress, but subsequently in all matters relating to the administration of affairs therein.

You will remember that occasion when, in conjunction with every member of my cabinet, he expressed his opinion so decidedly in favor of the direct repeal of the Missouri restriction."

To most unprejudiced men, Caleb Cushing's course with regard to the slavery question during these years seems to have been a mistake; but it is an egregious error to doubt his honesty and sincerity. It took no small amount of courage to adopt the policy which he followed. In the face of a strong public sentiment in Massachusetts, in opposition to many of his cherished friends and associates, in spite of increasing pressure on every hand, he did not fear to stand up openly and defend the acts of an unpopular administration. Rejected by old-line Whigs, ostracized by Republicans, disliked by conservative

Democrats, he kept on his lonely way. He thought himself to be fighting for the Union, and, while there was a chance yet to save it, he would not relax his vigilance. It was the saddest blow of his life to have the attack on the Union come from those Southerners whose interests he had upheld at the price of his own career.

CHAPTER FOURTEEN

THE PRELUDE TO CIVIL WAR

"Hear ye no warnings in the air?
Feel ye no earthquakes underneath?"

WHITTIER, *Expostulation*

WHEN Caleb Cushing returned to private life in 1857, he was one of the country's conspicuous figures. His utterances on national questions were eagerly awaited and widely quoted. He had become, indeed, a spokesman for the Northern Democrats, and, in the many addresses which he delivered, we can trace a slowly deepening bitterness against abolitionist doctrines. He himself was violently assailed, and occasionally retaliated in kind. There were few prominent offices, not excluding the Presidency, for which he was not mentioned, and it cannot be denied that he cherished hopes regarding both the White House and the ermine of the Chief Justice. He made no attempt, however, to win support by catering to any clique of politicians, and his course was unswerving through praise and calumniation. At heart he looked with equal suspicion on the abolitionist tirades of Garrison and the pro-slavery propaganda of Yancey, for he knew that both were endangering the Union.

"I hope now that you will come back to your books and your study," wrote his brother in 1857; but Caleb Cushing had the fever of unrest in his veins and could not keep out of the conflict. He planned a history of the administration of John Tyler, and even began collecting materials for the work. The ex-President wrote his son, John Tyler, Jr., January 5, 1857:

"That a fair history of my administration should be written by a competent person is a matter very near to my heart; and, therefore, it was with no common degree of satisfaction that I learned a few days ago, through a letter from one who professed to know something about it, that Mr. Cushing had resolved to undertake the task after retiring from office. I hope most sincerely that this may be so. From a man of his eminent abilities, who was also a prominent actor in Congress at the time, and intimately associated with me and my friends, and, therefore, well acquainted with measures and motives, I should anticipate, not only full and perfect justice, but also a work to go down to a late posterity. If he should set about the task, letters and papers in my possession should be furnished him *ad libitum*, along with any explanations he might desire. Whatever time might be assigned for the publication of such a work, whether during my life or after my death, I feel it to be important that it should be written while I live. My own explanations might be wanting to render the narrative clear and perfect. Express to Mr. Cushing the pleasure with which the mere rumor has filled me, and my anxious desire that he should execute the task.

I am gratified that he has placed you alongside of himself in your office. The only fear is that his successor, if successor he is to have, may prefer some other associate, and thus cut you adrift. While you are in office you should, if possible, make yourself acquainted with the whole volume of decisions made by the Attorney Generals, and write nothing for the newspapers which is not official."

Other responsibilities interfered, however, and Cushing could never find the time to make the researches necessary for such a long book. When he had nothing else to do, he wrote editorials for the Boston *Post* on topics of every sort, but chiefly on slavery and the "impending crisis." Week after week, with a pen that seemed never to tire, he assailed "Black Republicans,"[1] reasserted the con-

[1] Cushing wrote of the Republican Party in 1857: — "It is indeed a jumble of freaks and follies, as well as of factions, in which the old Free Soil Party predominates. That party had sub-

sistency and justice of the Dred Scott decision, defended the LeCompton Constitution, and took Douglas's part in the famous debates with Lincoln. His law partnership with Sidney Webster was launched in Boston, but most of the work was done by Webster. During the last week in August, just after his return from the West, he had Pierce as his guest in Newburyport, and the two together visited Plum Island and took a long walk to Byfield. On September 3, he entertained Governor Gardner and his staff, who had come to a muster of the Eighth Regiment, and he was present at a public dinner in the evening. On November 19, in Tremont Temple, he delivered the annual introductory address before the Mercantile Library Association, his subject being *Our Puritan Forefathers*. Avoiding both indiscriminate eulogy and censorious criticism, he gave an eminently just estimate of the Puritan virtues and weaknesses, abstaining entirely from any political references. He was followed on the platform by John Godfrey Saxe, who read his well-known poem *The Money King*. Many distinguished persons, including Franklin Pierce, were in the audience. As the year was closing, Cushing spoke at a brilliant dinner in the Parker House, given in honor of the retiring and incoming members of the city government. In February, 1858, he lectured on *The Mexican Republic* before the Democratic Union Association. He

sisted for eight or ten years upon the one idea of the Wilmot Proviso; that is, the application of the free soil clause of the Ordinance of 1787 to all the organized territory of the United States west of the Mississippi. To this the Democratic Party constantly replied that the Missouri Compromise in effect disposed of the question. . . . The political stock in trade of the Republican Party consists of two articles, — one, all the humbugs of the day . . . , and the other, the insolent assumption, in some of them, perhaps, the stupid mental delusion, that whatever view they take of the measures of government is the only moral side of public questions."

was busy also disposing of some of the books which he did not require, about nine hundred of which he gave to the Newburyport Library.

But we must not think of Cushing as doing nothing except deliver lectures and appear at public functions. There was an active political game going on, and it was not in his nature to sit by as a spectator. Always willing, if he could be useful, to serve the state even in a capacity relatively minor, he allowed himself to be named once more as a representative from Newburyport to the General Court. At the election of 1857, Banks, the Republican candidate, was chosen as Governor, but Caleb Cushing, running as a Democrat, defeated his opponent in an ordinarily Republican district. In 1858, he took his seat in the familiar Lower Chamber, the scene of some of his earlier oratorical successes, and was in that session again the most conspicuous member. A contemporary journalist gives an excellent description of him as he sat on the floor:

"That clear, calm, white forehead; the well-defined, handsome face and features; the pleasant expression; his dark eyes fixed on some quarter of the House; the thin, dark hair; the fresh youthful complexion; the quick, attentive, impulsive, comprehensive manner, all go to confirm one in his opinion that he is looking on the man who has studied political opinion until its minutest shades are made as palpable to him as the faces of men. . . . He is always active and busy. Now he is in this part of the House, now in that; now talking to a distinguished man, now shaking hands with an undistinguished one; now busy with a bundle of papers and the statute books; now at the clerk's desk, examining a document, clapping his spectacles on his nose every three minutes to look at something; now moving an amendment; now in his seat again: the next instant, hat in hand, moving up the aisle, — never resting, uneasy, nervous, — entering with equal energy into the most trifling, as into the most important affairs, — always ready with facts, with

arguments, and with enthusiasm. . . . When he does rise, there is hushed silence. All are on the *qui vive*. He steps into the aisle; plays with his spectacles, dangling on a string from his neck. His clear, impressive voice reaches every part of the hall, and, if excited, he flashes like the burnished steel. His manner in speaking is always emphatic, and he is delighted when he can make a sharp thrust into the fabric of his opponents."

In spite of his being in a political minority, he won the good will of all the members, even his adversaries, and exerted an influence of an extraordinary kind. Pearson, in his biography of John A. Andrew, thus describes Cushing's position in the State House:

"The members of the Legislature could not fail to be impressed by the fact that a man of his commanding talents should be willing to take his place among them to help in the law-making business of the state. . . . So cogent was his speech that, in the small matters of debate, not one of which escaped his notice, he regularly led the House a game of follow-the-leader; on the other hand, when he pressed his Southern principles too vigorously upon the honest anti-slavery majority, they had no means of answering him but by the silent power of votes."

A fellow member, describing Cushing's industry, wrote:

"It was a real pleasure last winter to see him coming to the House early in the morning to attend the sessions of the Judiciary Committee; then sitting down in his place, watching narrowly every incident of legislation, little as well as big, explaining, suggesting, protesting, controverting, arguing, expostulating, anathematizing."

The correspondent of the Springfield *Republican* said that Cushing's mind was like the trunk of an elephant, which could pick up a pin or an oak with equal ease. In all these tributes, we can recognize the testimony of Cushing's political adversaries to his personality and gift for leadership.

The most vital issue which Governor Banks faced after his inauguration was the question of the dismissal of Judge Edward Greely Loring, United States Commissioner in Massachusetts, who, in 1854, had issued a warrant for the arrest in Boston of the runaway slave, Anthony Burns, and, after his capture, had ordered, in accordance with the Fugitive Slave Act, that he be restored to his owner. Loring, who had acted in strict conformity with statute law, was condemned for his conduct by the abolitionists. He was also Judge of Probate for Suffolk County, a fact which had led the General Court to pass, in 1855, a measure forbidding a United States Commissioner to hold any judicial office in the gift of the Commonwealth. In spite of this legislation, however, Loring refused to withdraw from his seat on the bench, and the Know Nothing Governor, Henry J. Gardner, refused to proceed against him. By 1858, Loring's contumacy in thus resisting the operation of a state statute had stirred up great excitement among the Republicans, who accused him of violating the Massachusetts Personal Liberty Bill[1] of 1855.

John A. Andrew,[2] chosen as a Republican member from Boston to the Legislature of 1858, was a vigorous

[1] The Personal Liberty Bill was passed as an immediate consequence of the Burns affair, and was intended to prevent any fugitive from being carried away from the soil of Massachusetts. It was in direct defiance of the national Fugitive Slave Law, and amounted practically to nullification. Its details are interesting, but there is no space to study them here.

[2] John Albion Andrew (1818–1867) was born in Windham, Maine, graduated at Bowdoin College in 1837, and was admitted to the Boston bar in 1840. During the next twenty years he practiced his profession, appearing in behalf of several victims of the Fugitive Slave Act. He appeared in 1858 for his first term in the General Court, and was later war governor of Massachusetts for four terms, 1861–65. Andrew was a high-minded and useful public servant, whose ability Cushing respected.

character, who had made up his mind to effect Loring's removal, and naturally, therefore, placed himself at once in opposition to Caleb Cushing. Andrew and Cushing clashed swords early in the session, when Cushing objected to a petition presented by a dozen citizens of Amesbury, asking for Loring's dismissal. In late January, the Massachusetts Anti-Slavery Society petitioned for the use of the Hall of Representatives for a meeting. The Committee on Public Buildings, the Chairman of which was John C. Hoadley, of Lawrence, submitted a report granting the petitioners leave to withdraw, with the statement that it was contrary to good policy to allow the use of the hall to any society not in some way connected with the Legislature. Andrew then moved to amend the report by substituting an order that the use of the hall be granted to the Society. On this amendment Cushing made a closely reasoned speech, in which he pointed out that the Massachusetts Anti-Slavery Society was "one of avowed and professed hostility to the Constitution and to the Union." It was, furthermore, objectionable "on account of its hostility to the legal rights of our fellow citizens of other states."

> "The tendency of their action is to promote disorder, sedition, and servile war in states and among people to whom we are bound by the nearest and dearest ties. All their purposes are pernicious to the material as well as the religious and moral interests of the people; to the states, the Union, and the slaves themselves."

Andrew replied, praising Francis Jackson, the President of the Society, and maintaining that, since the Society in former times had been granted the use of the Hall, it was but common courtesy not to deny it to them now. When a vote was taken, Cushing was absent, but the House sustained Andrew. When the Massachusetts

Anti-Slavery Society held its meeting, it demanded the removal of Judge Loring as a *right*, and caused almost a mob gathering around the State House.

On February 1, Tillotson, of Worcester, presented a petition of certain legal voters of Newburyport, asking for Judge Loring's removal, and moved its reference to the Committee on Probate and Chancery; whereupon Cushing strenuously objected, and offered a series of resolutions allowing the petitioners leave to withdraw. On the following morning, Cushing spoke at length. He quoted the words of Wendell Phillips, who had said at the Anti-Slavery meeting:

> "The Republican members of the House are a pack of curs, whipped spaniels, slaves of the Anti-Slavery Society, obedient to their will, and a whipped spaniel instead of the venerable cod that looks on in serene majesty over their proceedings would be the more appropriate emblem."

He went on to argue that the House would be in a sad predicament if, with threats such as this hanging over them, they meekly did the bidding of the Anti-Slavery group and removed Judge Loring. Cushing, by sheer force of intellect, dominated the House. No one dared to answer him, and his opponents could do nothing but vote him down.

On February 26, Cushing took the floor in defense of his principles. Andrew had offered a petition from colored citizens of Massachusetts against the Dred Scott decision, and had made careful preparation for an argument in favor of the petition. With commendable wisdom, he consulted Charles Sumner, who was then disabled, asking for quotations from Cushing's "past public speeches" which could be used against him. Andrew, who had been stung by the accusation of the

Boston *Herald* that the majority in the House were "cowering" before the Newburyport representative, made an excellent speech in presenting the petition. He preserved an even temper, and seemed convincing. Then Cushing arose for a reply, speaking extemporaneously but with perfect command of his subject. He made an exhaustive analysis of the legal aspects of the Dred Scott decision, putting the case with such clearness and force that even his opponents applauded him. The New York *Tribune*, confessing Cushing's triumph, said:

"An impression has gone abroad among some of the people that, if there is no answer to be made to Mr. Cushing's arguments, perhaps his measures might as well be adopted. . . . When the great question of Judge Loring's removal comes up, Cushing must be met *in argument*, or the House and the people will not be satisfied."

Early in the session, Cushing had moved for a repeal of the Massachusetts Personal Liberty laws, but his proposal had been reported upon adversely by a House committee. Many moderate Republicans, however, joined with the Democrats in considering these laws unconstitutional, and Cushing was able to rally around him a sufficient number of followers to block for a time the Republican designs on Loring. Finally, however, their patience exhausted, the Republicans appointed a special committee, which, with Andrew as Chairman, recommended that Loring be removed by Executive Address. On March 10, Cushing, in the face of a defiant majority, delivered an eloquent appeal for fairness towards Loring. He compelled his opponents to admit that Judge Loring had not been guilty of any violation of the law or of any misconduct in office, and could not, therefore, be impeached. He asserted that there was no pronounced public sentiment in favor of Loring's removal, and that

he had been persecuted by a small and aggressive group of abolitionists. He declared that the Personal Liberty Acts were unconstitutional, and that Loring was simply to be made the victim of a legislative outrage.[1] Marcus Morton, the former Democratic Governor, and Charles Hale, a moderate Republican, also spoke against the measure; but it was forced through by a vote of 127 to 101. Governor Banks, after some deliberation, approved the decision and sent his message to the House on March 20.

The scene when this communication was received was of the most dramatic kind. The floor and galleries were packed with an expectant audience. A suppressed but quite apparent excitement seemed to be in the air. After the reading of the message, Andrew moved that it be referred to a joint committee. Then Caleb Cushing, indeed "the observed of all observers," rose from his seat on the Speaker's right, near the front, and addressed the members. One account says that "in a lugubrious tone, but with an affected solemnity of manner," he began with the statement, "And now, sir, the deed is done!" "Amen!" cried a Methodist member, in a loud and shrill voice, which stirred the assemblage to such laughter that Cushing could not help joining in. When quiet was restored, he returned to his theme and made a final attack on the Massachusetts Personal Liberty Acts, speaking impressively in defense of law and order, of adherence to constitutional standards, of support of established principles of government. Never had he talked to better effect; and, when he paused, it looked for a

[1] The newspapers, in reporting this address, said that the hall was crowded to its full capacity for Cushing's speech, and that he was given the closest attention for one hour and twenty-five minutes. A hostile account admitted that Cushing had seldom spoken with greater power than he did on this occasion.

moment as if no one would dare to answer him. It was then that Andrew, fortified by weeks of preparation, emerged into prominence by rising to his feet and replying, as spokesman for the Republicans. His address also was eloquent, and his courage in venturing to meet the elder statesman face to face won him the sympathy of many who love to support the under-dog. He closed with the words:

"I echo the declaration of the gentleman from Newburyport, that *the deed is done!* Yes, sir! It was *well* done, — and it was done *quickly!*"

When Andrew had finished, there was another burst of applause, and Cushing, pushing his way through the throng of admirers around the speaker, added, in his generous way, his congratulations to theirs. Cushing had too big a soul to be envious of another's success.

Cushing had contended that certain sections of the Personal Liberty Law were unconstitutional and unjust; and Governor Banks, who, in spite of his abolitionist sympathies, had never favored the removal of Judge Loring by legislative address, now stepped to Cushing's support with a message calling attention to the manifest injustice of some passages in that act, and suggesting a few amendments. When these were introduced, Cushing could not refrain from moving to substitute a bill of general repeal, but he could muster only 34 votes to 122. He did, however, have the satisfaction of seeing the passage of some modifications which tempered the harsh penalties of the original measure.

In dwelling thus at length on the duel between Cushing and Andrew, we have neglected the former's active part in the other business of the session of 1858. He opposed a bill increasing the number of studies in the

common schools, asserting that thoroughness in the elementary branches was a most vital element of education. He spoke vigorously against an act allowing atheists to testify upon the witness stand, without taking the oath prescribed by law, his argument being that it would weaken the administration of the law in courts of justice. He advocated some important financial measures, making for economy in the expenditure of state funds. When the General Court finally adjourned on March 27, after a session of eighty-one days, it had an excellent record behind it.

On the last morning, everybody, friend and foe, joined in a kind of love feast, in which, we are told, Caleb Cushing both gave and received the most praise. It was he who offered the complimentary resolution to the Speaker, Mr. Julius Rockwell, in words of courtesy and tact. He was followed by Andrew, who referred pleasantly to his encounters with Cushing:

> "It has happened to me to be obliged to meet the gentleman from Newburyport, and others, his political associates, in the sharpest encounters of debate; and I now say that neither from the lips of one member of this House nor another, has there ever fallen a word which has given me a moment's pain, or which I could remember with dissatisfaction, if I would. . . . I intended originally only to respond, in my humble way, to the more than justice which was rendered to us by that distinguished gentleman who has led the opposition in this House with that ability known already to fame wherever the English language is spoken among men. I am thankful, sir, that we have thus been permitted, while meeting as political adversaries, to part as personal friends."

Another Republican, George D. Wells, later Judge Wells, said on this same occasion:

"We owe much to the uniform courtesy of that gentleman who, leading the opposition upon this floor, as he leads it in my opinion in the nation to-day, has set us an example of debate, earnest, ardent, impetuous, and eloquent, yet strictly courteous, kindly, generous, and forbearing."

For the ordinary man, the work of this busy session would have been quite enough to occupy the mind; but with Cushing, it was merely one phase of his activity. He was carrying on private practice of the law, and had accepted some important cases. In April, for instance, he was in Washington conducting the defense of Judge Watrous, of Texas, who was charged with malfeasance in office. He was constantly in demand, moreover, for public addresses, and there were many invitations of this sort which he could not decline. In October, 1857, he spoke at the festival of the Massachusetts Charitable Mechanics' Association, in Faneuil Hall, in which he dealt with the panic of 1857 and its causes, referring humorously to the alleged extravagance of women:

"I confess it shames me, as a man, to hear so much said of the profuseness of the ladies, in view of our own way of life. Most assuredly, Mr. Fritz Frivol, with his champagne, his cigars, his fast horses, his yachts, and his other fancy pastimes, has no right to complain of the fine robes, the broidered handkerchiefs, and the *bijouterie* of Miss Flora McFlimsey. She will discover that she is not in want of anything to wear as soon as he will find anything useful to do; for even she has a warm woman's heart beneath all the point lace and moire antique in whose mysterious volume her fair form is draped; and if he did but know how to reach that heart, he would see her as prompt to please by frugality as by luxury, and proud to make any sacrifice of fashion at the voice of duty and of love."

During the following winter, while the legislature was in session, he frequently appeared on the platform. On

three successive nights, February 10, 11, and 12, he lectured in different sections of Boston, each time on a different subject: once before the Mercantile Library Association, on *The Puritans;* once before the Young Catholic Friends Society, on *The Celtic Races;* and once in South Boston, on *Mexican History.* Each one of these talks was delivered without a manuscript, before a large and critical audience, and at a time when his mind was much troubled with the business of the House. In March, he spoke before the Mishawan Literary Society of Charlestown, on *Isthmian Thoughts,* and delivered what was described as a "military address" in Tremont Temple, at the sixth anniversary of the organization of the Boston Light Dragoons, in the course of which he paid a noble tribute to the "citizen soldier."

On the fifth of July, Cushing appeared in New York to deliver an Independence Day oration before the assembled Democracy of Tammany Hall. He had given unusual care to the preparation of this address, and it was received with the most eager attention. Undertaking to discuss the interesting problem of whether the nation had degenerated since the time of the Revolution, he reaffirmed the patriotism and loyalty of his own generation. He dwelt especially, however, on the dangers of disunion, condemning those who had suggested a break between North and South. Refuting the familiar charge that the South had dominated the national councils, he reviewed the long list of Massachusetts and New York statesmen who, since 1789, had served in offices of trust. In language which might well have made his former Whig associates shudder, he praised the Democratic Party as being the one, since Washington's day, "to initiate all the great measures of administration"; and he assailed the Republican Party as being controlled

by "negrophilist Union haters." Branding the Republicans as being the party of sectionalism, he described them as follows:

> "They are men who talk of Freedom when they mean Power; who clamor continually of the imputed encroachments of the South on the North; who organize and uphold sectional party combinations; and whose avowed objects are the establishment of a sectional administration of the Constitution of the United States."

The reception of this speech depended, of course, on the politics of the critic. To the New York *Tribune*, it was "a conglomeration of rhodomontade and fustian, of sophistry and imposture, of spread-eagle bombast and low-minded demagoguism"; to the *News*, it was "a soul-stirring appeal for the maintenance of the Constitution and the Union of the states." Many papers noted the fact that, on the same day, three distinguished Massachusetts citizens, — Edward Everett, Rufus Choate, and Caleb Cushing, — spoke at Democratic celebrations in support of Webster's favorite theme, — the preservation of the Union.

In August, Cushing was proposed as a candidate for Congress from his district, but absolutely declined to accept a nomination. Early in the month he had a sharp attack of illness, which incapacitated him for several weeks and compelled him to remain close to his home. While he was confined to his bed, he received an invitation to attend a public dinner held at Craytonville, South Carolina, in honor of James L. Orr, Speaker of the House of Representatives. Unable to take the long trip, Cushing contented himself with sending a letter, in which he devoted himself to a eulogy of South Carolina and condemned abolitionist tendencies in Massachusetts:

"Men of all parties are beginning to see and admit the anarchical, as well as the immoral and irreligious, tendencies of the anti-slavery agitation. It avowedly discards every duty of government and every obligation of law; it ostentatiously advocates political assassination; it preaches a religion of irreligion; all evanescent absurdities of opinion are its allies; there is a monstrous imposture of superlatively ridiculous table-rapping tricks, miscalled spiritualism, moving parallel with it; the stereotyped names of the same vagrant agitators, of all colors and sexes, figure in the woman's rights, free love, and abolition conventions; we live in a Babel of crotchety conventions, with the declared purpose of invading our families; and the terms of contempt in which these peripatetic professional conventionizers, male and female, speak of morality, religion, and the Bible, are only exceeded by those of hatred which they apply to the Constitution and the Union.

Rest assured, that if, in all this, there be peril to any part of the country, it is a peril mainly to this part, in which such madness runs riot. Here, its mischievous effects are first felt; and it must succeed in the accomplishment of its purposes of dissoluteness and disorder here, before it can begin to accomplish them elsewhere. It cannot succeed here without a revolution and civil war, the fires of which would have to devour the northern states before they could reach the southern."

It will readily be believed that the language and doctrine of this letter were not palatable to the New England reformers, one of whom was James Russell Lowell, Cushing's inveterate foe. It was Lowell who, in the *Atlantic Monthly* for November of that year, published an unsigned article entitled *A Sample of Consistency*, in which he presented a clever but altogether prejudiced analysis of Cushing's career, judged, of course, from the abolitionist standpoint. A few quotations will serve to indicate the general tone of the article:

"Mr. Caleb Cushing, — the 'Ajax of the Union,' as he has lately been styled, — for what reason we know not, unless that Ajax is chiefly known to the public as a person very much

in want of light, — Mr. Caleb Cushing has received an invitation to dine in South Carolina. This extraordinary event, which amply accounts for the appearance of the comet, must also be held to answer for the publication by Mr. Cushing of a letter almost as long, if not quite so transparent, as the comet's tail. Craytonville is the name of the happy village, already famous as the place of the nativity of Mr. Speaker Orr, and hereafter to be a shrine of pilgrimage, as the spot where Mr. Cushing might have gone through the delightful processes of mastication and deglutition, had he chosen. . . .

It occurred to us suddenly that the next Democratic National Convention is to assemble in Charleston. It is not, therefore, too early to send in sealed proposals for the Presidency; and if his letter is Mr. Cushing's bid, we must do him the justice that we think nobody will be found to go lower. We doubt if it will avail him much; but the precedent of Northern politicians going South for wool and coming back shorn is so long established, that a lawyer like himself will hardly venture to take exception to it. Like his great namesake, the son of Jephunneh, he may bring back a gigantic bunch of grapes from this land of large promise and small fulfillment, but we fear they will be of the variety which sets the teeth on edge, and fills the belly with that east wind which might have been had cheaper at home.

If, nevertheless, Mr. Cushing is desirous of being a candidate, it is worth while to consider the principles on which he would administer the government, and what are his claims to the confidence of the republic. We are beginning to discover that the personal character of the President has a great deal more to do with the conduct of the almost irresponsible head of the Republic. What, then, have been Mr. Cushing's antecedents, and what is his present creed?

There are many points of resemblance between his character and career and those of the present Chancellor of the English Exchequer. Belonging to a part of the country where opinions are to all intents and purposes politically proscribed, he has gone over to a party whose whole policy has tended to harass the commerce, and to outrage the moral sense of New England, and has won advancement and prominence in that party by his talents, contriving at the same time to make his origin a service

rather than a detriment. Like Mr. Disraeli, he has been consistent only in his devotion to success. Like him, accomplished, handsome, plucky, industrious, and dangerous, if unconvincing, in debate, he brings to bear on every question the immediate force of personal courage and readiness, but none of that force drawn from persistent principle, whose defeats are tutoring for victory. With a quick eye for the weak point of an enemy, and a knack of so draping commonplaces that they shall have the momentary air of profound generalizations, he is also, like him, more cunning in expedients than capable of far-seeing policy. Like Mr. Disraeli, versatile, he is liable to forget that what men admire as a grace in the intellect, they condemn as a defect in the character and conduct. Gifted like him with various talents, he has one which overshadows all the rest, — the faculty of inspiring a universal want of confidence. As a popular leader, the advantage which daring would have given him is more than counterbalanced by an acuteness and refinement of mind which have no sympathy with the mass of men, and which they, in turn, are likely to distrust from imperfect comprehension.

Shall we take lessons in fixedness of principle from the Whig Anti-slavery member from Federalist Essex? in stable convictions from the Tyler Commissioner to China? in consistency from the Democratic Attorney General? in an amalgam of all three from the Coalition Judge? . . . Since Reynard the Fox donned a friar's hood, and, with the feathers still sticking in his whiskers, preached against the damnable heresy of hen-stealing, there has been nothing like this! "

One can readily understand that Lowell, and all the Anti-slavery group in Massachusetts, must have looked upon Caleb Cushing as having gone even beyond Webster in what they considered to be the course of political apostasy. More and more Cushing was associating himself with Southern statesmen. In 1858, his old friend, Jefferson Davis, spent the summer on the Maine Coast, and, when he left in October and passed through Boston, the Massachusetts Democrats made his visit

the opportunity for calling a ratification meeting in Faneuil Hall. There an immense throng assembled on the evening of Monday, October 11. The first speaker was the Democratic candidate for Governor, Eramus D. Beach, of Springfield. When he had finished, the President called upon Caleb Cushing, who in words of boundless eulogy, spoke of Davis's valor, patriotism, and wisdom. Davis had an inspiring audience. On the platform were Robert C. Winthrop and Edward Everett, who had already entertained him in their homes; on the benches before him sat a large proportion of the intelligent conservative element of Boston. Beginning with praise of Massachusetts and of New England, of Franklin Pierce and Caleb Cushing, — whom he called his "old and intimate friend," — he went on to make an earnest plea for the Union. Admitting frankly that he belonged to the "slave expansionist" party, Davis protested against the meddling with the internal affairs of a sovereign state. His argument in defense of the Dred Scott decision followed lines of which Cushing must thoroughly have approved. Davis concluded by saying that danger to the Union still existed, and that it was useless for his hearers to blind themselves to that unpleasant fact. It was a dignified address, serious in its content, which made a deep impression on thoughtful minds. It had the effect of making Northerners respect Davis, even though they did not agree with him; and it was only a few days before New England Democratic newspapers were advocating a ticket made up of Davis and Cushing, for the election of 1860.

Two weeks later, Cushing was in Richmond, where he delivered the principal address at a meeting of the Virginia Central Agricultural Society. While avoiding politics in general, he reaffirmed the belief that no state has

the right to interfere with the institutions of another, pointed out that this nation has certain "predestined lines of expansion" to the West and South, defended the Ostend Manifesto as representing the views of George Washington himself, and advocated the annexation of Cuba and Mexico.

"If Cuba lies in the path of our destiny, so much the better; but that Mexico must, and does, I religiously believe, — and I would have it so; not in the sense of animosity, but of friendship, — not by the act of frivolous, irresponsible, mischievous, private invaders, but by the deliberate, efficacious, and official action of the Government of the United States.

If any thoughtful persons contest this, — if, apart from the question of expediency, they doubt its rightfulness, and, therefore, oppose the continuation of the advancement of the United States, — let them tell me by what arguments they justify the beginnings of that advancement, and its progress thus far, — nay, let them tell me by what rule of right we stand anywhere in America? Where is Powhatan? Where Massasoit? Where Sassacus? Is not the occupation of any portion of the earth by those competent to hold and till it, a providential law of national life? Can you say to the tide that it ought not to flow, or the rain to fall? I reply, *it must!* And so it is with well-constituted, and, therefore, progressive and expansive nations. They cannot help advancing; it is the condition of their existence."

Such doctrines as these had at least the merit of being definite and positive; they were certainly not evasive or compromising. They were indeed music to Democratic ears. An article in the *United States Democratic Review* for August, 1858, entitled *Choate and Cushing*, linked together these two statesmen as having abandoned Whiggism for Democracy. After praising Webster for his renunciation of Whig policy, the anonymous author went on to say:

"Why do so many of the most profound and able men in the opposition leave it and espouse the cause of Democracy? This is the more remarkable when it is remembered that these statesmen take all the hazards of local defeat, if, indeed, not local immolation, when they turn against their sectional associates. Men high in Democratic favor have, in times past, deserted the cause to gratify their resentment to their more successful co-laborers. Others have withdrawn from the party when it was supposed to be in danger of defeat, — anticipating a safe retreat among the opposition, — but none have ever left it because it was not national and patriotic. Not so with Cushing and Choate, and we might almost include Everett. They have left the party because their party deserted the country and ignored its Constitution. It was the same with them as with Webster and Clay; they were compelled to choose between their party and their country, and, like Webster and Clay, Choate and Cushing chose that better part, their country. They have enlisted in the national Democratic Army, and they are fighting its battles with a vigor and bravery characteristic of bold and successful chieftains. . . . We have referred more particularly to these two statesmen because they are surrounded by constituents who are as yet opposed to their views. . . . Cushing and Choate, like Webster, take their stand in the midst of sectional fanaticism. They proclaim for the Constitution and the Union in full view of the preponderance of opposition sentiment at home."

What Cushing's private sentiments at this period were may be determined, to some extent at least, from a letter which he wrote on October 2, 1858, to Pierce, who was then in Italy:

"I have received your welcome letter of August 20th, and rejoice to learn that Mrs. P. enjoys improved health. You must both be delighted with the scenes and objects you see in Europe.

For the two months following my letter of April, I was continually occupied with professional business at Washington; and one affair after another has kept me busy through July,

August, and September. And so the time has unconsciously passed.

I have been rewarded for my exertions to secure the confirmation of Judge Clifford, first as to myself, and secondly as to Mr. Webster [Sidney], for whom I was thus enabled to obtain the appointment of U. S. Commissioner.

Meanwhile, since the adjournment of the Legislature, I have eschewed politics, having appeared in them twice only, — in the Tammany Oration, of which you have a copy, and in the South Carolina letter herewith. So much for my own personal matters.

Col. Davis, passing the summer at Portland, has made a most profound impression on the people of Maine, directly and indirectly, of course, in New England. He declines, however, to speak in Boston.

And now, as to public affairs generally. I should say that our party prospects were bad, if it were not that those of the opposition were still worse. The separation of Mr. Douglas from the Administration confuses everything. If he fails, do we not lose the North West? If he succeeds, will he not presume too much? On the question of his success, opinions differ; but the more general one seems to be that he cannot prevail. He is greatly embarrassed financially as well as politically. He continues to have many friends at the North; and some conspicuous ones at the South. But there is, I think, no example in our history of a Parliamentary or other leader overcoming a President of his own party except by pulling down the party itself and going with it. I do not see how Mr. Douglas can make a success out of an experiment in which Mr. Hamilton, Mr. Clay, and Mr. Calhoun failed, — to say nothing of Mr. White, Mr. Rives, Mr. Talmadge. Even Mr. Clay and Mr. Van Buren combined broke themselves to pieces against Mr. Tyler. In a word . . . one must either go with the Administration, or go *to* the Opposition.

Mr. Forney, in a late speech at Tarrytown, has declared against Mr. Buchanan personally. We lose Pennsylvania, it is thought, but with hope of compensating gain in New York.

We nearly got two members in Maine, Bradbury and Johnson. They may perhaps unseat their opponents. There is hope of one member from New Hampshire, — probably Captain

Marcy, of Portsmouth. We shall possibly, nay probably, save the next House.

I have not seen Mr. Buchanan since April; for I have kept out of political circles at Washington, perhaps more than I ought, but I hear that the feeling towards *our set* is amended, if not in the breast of the President, yet certainly of his cabinet.

In so far as regards the next Presidential selection, I cannot perceive on our side any definite *individualization* as yet. The plan of the N. Yorkers is to act in concert with N. England, and together select a Southern man; but nobody ventures to designate the leader. The South is getting to be as jealous of its men, as the North is of its, as the faultfinding with Mr. Hunter, Mr. Wise, Mr. Cox, Mr. Stephens, Col. Davis, Mr. Tombs, and others, whenever they talk nationalism, indicates. I think, on the side, the prevalent effort at this moment is to combine New York and Ohio for either Seward or Chase. But there is dissension, with consequent uncertainty, in both camps. . . . On December 5 I go to Washington to attend the Supreme Court, and will then write to you again, with such means of information as the reassembling of Congress may afford."

In the General Court for 1859, Cushing was again a central figure. He was the natural leader of the Democratic minority in the lower house, and, when the election for United States Senator was held in January, he was the Democratic candidate, receiving one vote in the Senate and twenty-five in the House. Henry Wilson, the Natick shoemaker, was, however, readily elected by a combination of Republican and Native American [1] ballots.

Encouraged by the success of their efforts to depose Judge Loring, the abolitionists now flooded the legislature with petitions for a still more stringent anti-extradi-

[1] The Know Nothing, or American Party, organized to exclude men of foreign birth from any share in our government, took form in Massachusetts in 1854, in which year it elected a governor (Henry J. Gardner), and an entire state government, as well as every member of Congress from the state. Gardner was re-elected in 1855 and 1856,

tion law; as a consequence, a bill was introduced, reinforcing the Personal Liberty Acts. Against this, Cushing fought with all his parliamentary skill. The discussion day by day was reported at length in the Boston press during the month of March, 1859, Cushing being commended, even by his enemies, for the frank and manly way in which he confronted numerical opposition. It was due solely to the convincing nature of his arguments that, although there were only twenty-nine avowed Democrats in the House, he was able to win over enough conservative Americans (Know Nothings) and Republicans to defeat the measure. This almost forgotten contest was one of the most notable of Cushing's personal triumphs.

Andrew had not accepted an election to the General Court of 1859, and there was no one else who was really capable of meeting Cushing in debate. It was, however, in this session that an incident occurred illustrating the readiness with which Cushing could annihilate those who ventured to take the field against him. An amendment to the Massachusetts Constitution had been proposed, embodying features of the so-called American doctrine and lengthening to two years the period which must elapse before an alien, after being naturalized, could be allowed to vote. The purpose behind this amendment was the temporary disenfranchisement of a large number of the Irish, English, and German immigrants, who were landing on our shores by thousands every year. The abolitionists, with ridiculous inconsistency, were supporting this plan; Caleb Cushing, who had a marked sense

---

but was beaten in 1857, by which time the movement had spent its force. Its candidate for the Presidency in 1856 was Millard Fillmore. Cushing disliked intensely the principles of the Know Nothings, and opposed them frequently in public.

of justice and legality, was bound to oppose it. In early February, 1859, the question was brought up for debate. Mr. Foster, a member from Monson, bursting to secure some advantage over the Democratic statesman, quoted at some length from two of Cushing's speeches, in one of which he had spoken of the Chinese as "a cultured and lettered race, the depositories of the oldest and the most tenacious of all forms of human civilization" and in the other had referred somewhat disparagingly to the Chinese as a people. With an irritatingly complacent air, Foster turned to the House and charged Cushing with inconsistency. The words had barely come from his lips before Cushing was on his feet and spoke as follows:

"The gentleman from Monson has made a perfectly fair use, as I admit, of two passages from two different speeches of mine. I did utter both of those passages upon the occasions to which the gentleman refers. And I do not now retract one word of what I then said. I have said, sir, and I now reaffirm, that I would not admit the natives of China, in testifying in our courts, to privileges beyond what other men possess.

But I call upon the gentleman, or upon any gentleman in this House, or upon any man in the whole country, to show a single word in that speech, or in any of mine, in which I ever said that I would admit them to political equality with myself. I have said (and in the very speech from which the gentleman first quoted) that I did not see any sound reason to admit to citizenship the black man of Africa, and at the same time to exclude the yellow man of Asia.

Mr. Speaker, I, — you, — we, — gentlemen of the House of Representatives, belong to that excellent white race, the consummate impersonation of intellect in man and loveliness in woman, whose power and whose privilege it is, wherever they may go, and wherever they may remain, to Christianize and to civilize, to command and to be obeyed, to conquer and to reign. I admit to an equality with me, sir, the *white man*, — my blood and race, whether he be the Saxon of England, or the Celtic of Ireland. But I do not admit as my equals either the red

man of America, or the yellow man of Asia, or the black man of Africa."

This particular reply, we are told, roused the House and the galleries to the wildest enthusiasm, and completely discomfited the "up-state" member. It was in a longer address on the same day that Cushing most completely presented his views on the naturalization subject. He declared, with much force, that the contemplated amendment was both unconstitutional and unjust; that the Germans and the Irish, at whom it was principally aimed, had come to this country to escape oppression, and that they would make loyal and intelligent citizens, — in which contention he was undoubtedly correct. He then went on:

"Whatever we have of great or good in us is the blood of our European fathers. It is the Irish and Scotch and English and German blood of our fathers which constitutes our greatness, our power, and our liberty. . . . Mr. Speaker, from the day when Montgomery headed those adventurous columns which made that desperate march through the wilds of Maine into Canada, from the day when Gates commanded those victorious legions which won the first great battle won by our fathers on this continent in the struggle against the attempt of Great Britain to conquer this continent, — from that day, sir, to this, there has not been a battle fought, in which these emigrant Irish, English, and Germans have not been found in the front of the fight.

Not merely in the battles of the Revolution, not merely in the last war with Great Britain, not merely in the war against Mexico, but in every one of those unrecorded and almost unregarded battles with the Indians on our frontiers, in which many a brave heart has found an obscure and unmarked grave upon the prairies of the West, — I say, wherever our flag has been unfurled, wherever our shots have been fired, there have been found the emigrant Irish, English, and Germans, ready to point the cannon and thrust the bayonet at the hearts of our enemies. These are the men you would disfranchise, — pa-

triotic, determined men, devoted to our institutions, and ready always to rush into danger when the cause of our country requires the self-devotion of Americans.

I do protest against the action of our Legislature, which proposes to inflict a stigma upon them; I protest against an act which would deprive them of their co-equality with us in all political rights; I protest against the proposed amendment, founded, as it is, in political passions which are now fast dying out, and of which this seems to be the last expiring struggle; I protest against an act, which is to brand with indignity and dishonor a large class of the brave, good, and patriotic citizens of the United States and of this State."

This exposition of broad and statesman-like views was for many years a kind of Declaration of Independence for immigrants from the North of Europe, who saw in Caleb Cushing one who recognized their plight and was aware of their capabilities. Had Cushing been willing to extend to other races the toleration which he showed invariably to every branch of the Caucasian family, he might have placed his name among the immortals.

The onward march of events allowed Cushing no real period of leisure. Newspapers in December, 1859, urged his appointment as United States Commissioner to Mexico, but without avail, for Buchanan was too cautious to send to Mexico a representative whose cherished dream it was to annex that country to our own. From other quarters, it was suggested to Governor Banks that he might easily shelve Cushing by appointing him to a seat on the bench of the Massachusetts Supreme Court. Cushing sent a long letter to the Young Men's Democratic Association of Cincinnati, who were planning to hold a grand celebration on January 8, the so-called "Jackson Day," in commemoration of the Battle of New Orleans. History, with all its strange ironies, has few episodes more whimsical than this eulogy of "Old Hickory" by

one of the founders of the Whig Party. On January 18, at the old Revere House, in Boston, he presided over a notable dinner, managed by Peter Harvey, in memory of Daniel Webster. Cushing and Choate, the principal orators, delivered glowing addresses on the career of the dead statesman; letters were read from Everett, Douglas, Breckinridge, Cass, Rives, Wise, Davis, and many others. It is interesting to find Cushing, in his introductory remarks, paying a tribute to the "marvellous qualities of Anglo-Saxon blood" and expressing the hope that there would never be another conflict between the two great sections of the Anglo-Norman race. With all these, and other interests, Cushing was so much occupied that he could during the spring attend only one meeting of the important Committee on the Revision of the Massachusetts Statutes, which was settling a matter in which he was ordinarily absorbed. On May 23, he wrote Pierce, who was then in Paris:

"I have received with great satisfaction your letter of the 15th April from Rome. If, as you intended, you proceeded through Northern Italy into Austria, you will have found yourself in the midst of military movements. However that may be, I assume that you are now at Paris.

Your letter to Mr. Farley was well received. One query occurred to me on reading the letter, namely, whether in Italy you had access to a sufficient number and variety of American journals to appreciate the state of things in the United States. That is, I had some apprehension lest the N. Y. *Herald* might have been the main channel of intelligence to you. The *Herald* seems to have but one idea, adulation of Mr. Buchanan and vituperation of you. It writes him up and endeavors to write you down with equal disregard of truth in both respects. Indeed, it seems to have a monomania on the subject. Meanwhile in other journals, and in the conversation of political circles, the reverse of the doctrine of the *Herald* meets me everywhere. Thus, the *Journal of Commerce* and the *Times* have more than

once done full justice to you and your Administration. So it is of opinion at Washington.

During the last year, I have seen Col. Davis frequently, Mr. McClelland and Mr. Campbell from time to time, and corresponded with Mr. Guthrie; our relations continuing of the most cordial nature.

Col. Davis, as you will have heard, passed last summer in N. England. He made a capital speech in Faneuil Hall, on which occasion I introduced him to the audience. All this, I believe, was suppressed by the N. Y. papers, and probably did not reach your eye.

It is utterly out of my power to communicate to you any valuable opinion as to future political events. The Democratic Party is very much distracted; luckily the Republican Party is not less so. No man looms up on the distance large enough to overcome personal wishes and carry the multitude with him. Meanwhile if we can but agree at Charleston as to doctrine and men, I think our chances are better than our adversaries' for the next campaign.

I look forward to the contingency of your personal influence being important to the harmony of action at this convention. The States will begin to appoint delegates this coming summer and autumn."

On July 4, Cushing was at Mount Vernon, from which he wrote a very entertaining letter to certain Democrats of Philadelphia, who had invited him to address them on that day. Instead of dwelling on political matters, Cushing confined himself to a description of the conditions at Washington's former home and to a discussion of Washington's influence on the nation which he established. The letter reveals a side of Cushing's nature not always apparent in the other phases of his life.

The one dramatic event of the fall of 1859 was the John Brown raid, which compelled many citizens of Massachusetts and other states to face a crisis which they had long been dreading but had hoped to avert.

On October 17, John Brown,[1] with his little band of twenty-two white and black adherents, made an attack on Harper's Ferry. Then came, in quick succession, his capture, his trial, his condemnation, his sentence, and his execution. Meetings of sympathy were held in some Northern cities, but most persons not extreme abolitionists denounced without qualification this outrage on law and order. On December 8, six days after Brown was hanged, the famous "Boston Union Meeting" was called in Faneuil Hall, starting at eleven o'clock in the morning. The call for the assemblage had been signed by nearly every prominent citizen of Boston and its vicinity. The venerable Levi Lincoln, long retired from public affairs, came from his seclusion to preside, and set a note of solemnity for the gathering. In his opening remarks he announced his own position in unequivocal terms:

> "I am a friend to freedom, as are you all. I would restrict slavery to its narrowest legalized limits, and do whatever was in my power to remove it from the whole land, whenever, and as soon as in the goodness and mercy of God, it could be done with wisdom and safety. We are all lovers of liberty. There is not a single pro-slavery man, in the opprobious sense of that term, in all this vast assembly; no, not one."

Resolutions were then passed, denouncing the John Brown raid. The President next introduced Edward Everett, who in a speech which, according to Carl Schurz, had "the coldness of academic perfection," asked his hearers "to

[1] John Brown (1800–1859), born in Connecticut in the same year as Caleb Cushing, had been an unsuccessful business man and the father of twenty children. In 1855 he had been at Osawatomie, Kansas, where his fanaticism led him to murder five pro-slavery settlers. His plans for taking Harper's Ferry were carefully made, and it was captured without the firing of a gun. The officer in command of the marines who besieged and arrested Brown was Captain Robert E. Lee.

forego for a time all mere party projects and calculations, and to abandon all ordinary political issues," and to meet as one man to take counsel for the preservation of the Union. He said in one significant paragraph:

"Some one may ask why does not the South fortify herself against the recurrence of such a catastrophe by doing away with the one great source from which alone it can spring. This is a question easily asked, and I am not aware that it is our duty at the North to answer it; but it may be observed that great and radical changes in the framework of society, involving the relations of twelve millions of men, will not wait on the bidding of an impatient philanthropy. They can only be brought about in the lapse of time, by the steady operation of physical, economical, and moral causes."

Everett was followed by Caleb Cushing, his old pupil, whose appearance was the signal for a wave of applause, indicating that he was the most popular figure on the platform. After a complimentary reference to Everett as the natural successor of Webster and Choate in the affections of Massachusetts citizens, Cushing allowed himself an analysis of his own attitude towards the slavery issue during the past two years, beginning with his Faneuil Hall speech in 1857, continuing with his espousal of the cause of Judge Loring, and concluding with some mention of his part in defending successfully three men accused of kidnapping a fugitive slave.[1] He then went

[1] In November, only a few weeks before this meeting, Cushing had undertaken the defense of Baker, Crowell, Bacon, and Orlando, who were being tried at Hyannis for the alleged kidnapping of a slave named Columbus Jones. This Jones had concealed himself at Pensacola, Florida, on board Captain Orlando's brig *Rolerson*, but had been discovered and carried to Hyannis. There Captain Orlando chartered a steamer, the *Elizabeth B.*, to convey Jones back to Norfolk, and thence to Pensacola. This having been done, the defendants were arrested in Boston on complaint of Francis W. Bird, of Walpole, an abolitionist, and trial was set for a special term of the

into an exhaustive examination of the legal and moral aspects of John Brown's raid, pointing out that his actions could not be extenuated. From denouncing the lawlessness of Brown's conduct, he proceeded to deal with the New England abolitionists, — Wendell Phillips, William Lloyd Garrison, Ralph Waldo Emerson, Theodore Parker, and others, — who, he said, "by constant brooding upon one single idea, — that idea, if you please, a right one abstractedly, — have come to be monomaniacs of that idea, and so have become utterly lost to the moral relations of right and wrong." He conjured his hearers to repudiate the "band of drunken mutineers" who were wrecking the Ship of State, assailing the constitutions of the Commonwealth and of the Nation, and organizing expeditions of "rapine and treason." He warned the audience that, if the abolitionists undertook to invade the South in order to destroy the Union, "the first fighting would be done on Northern soil."

Cushing's address was followed by the reading of letters from many distinguished New England men, including Franklin Pierce, the venerable Marcus Morton, George Peabody, and several former governors of Massachusetts. Most conservative citizens, regardless of party, were united in their horror at the John Brown atrocity. The fact that Everett and Cushing, who had

Superior Court, under Chief Justice Allen. At the trial, Cushing made an eloquent appeal for adherence to the letter of the law. The jury brought in a verdict of "Not Guilty," it being understood that the prosecution had failed to prove beyond a doubt that the act of transferring the slave from the brig *Rolerson* to the schooner *Elizabeth B.* was committed upon water within the jurisdiction of Barnstable County. The case was conducted without disorder and with the utmost good feeling among the attorneys engaged; and Cushing added to his already enviable legal reputation by the courtesy with which he presented his arguments and the skill with which he turned aside the contentions of the prosecuting attorney.

been separated politically for some years, now once more appeared on the same platform was significant of the effect which it produced in bringing together all those who stood for law and order and who felt no sympathy with advocates of violence in any cause.

One document, summarizing Cushing's opinions in the late autumn of 1859, has never before been published. Dr. George B. Loring, Chairman of the Democratic State Convention, wrote to inform him that Cushing had been named as one of the delegates at large from Massachusetts to the approaching convention at Charleston. In reply, Cushing prepared a letter expressing his sentiments on the John Brown affair, — a letter which, owing to the fact that the Boston Union Meeting gave him an excellent opportunity for airing his views, was never published, but which is, nevertheless, an interesting contribution to the history of the pre-war period.

After thanking the Convention for his appointment, Cushing accepted the honor conditionally, apprehending, as he did, that the next few months might bring about a situation which would make the gathering at Charleston impossible. He then went on:

"We stand now in the presence of the recent fact that a citizen of the United States, at the head of other citizens of the United States, all with arms in their hands, has passed from one of the Northern States into the State of Virginia, for the avowed purpose of getting up a social revolution and Civil War in that State. This traitor and murderer finds two sets of sympathizers in the Northern States, — one set who say that his plans and arts were so stupidly criminal, and so criminally stupid, that he must have been crazy, and should therefore go unpunished, — and another set, who, moved by their own crazy false estimation of the moral quality of his acts, proceed to proclaim and honor him as a hero, a saint, and a god. . . .

Beyond this particular fact is the general one, that a very

large, and now a dominant political interest in nearly all the Northern States is founded upon and inspired by the single idea of determined opposition to, if not fanatical hatred of, their fellow-countrymen of the Southern States. That hatred, or opposition, has not sprung up by reason of any wrong done to the people of the Northern States by those of the Southern, but only because the minds of the people of the Northern States are filled with exorbitant ideas of the relative superiority of their own social system and local laws, and equally exorbitant ideas of the relative inferiority of the social system and local laws of the Southern States. Animated, stimulated, infuriated, by misdirected impulses of angry and meddlesome propagandism and ferocious pseudo-philanthropism, a considerable portion of the people of the Northern States, including those who by means of plurality elections and the morbid indecision of so many good men, have succeeded in gaining control of most of the State Governments, — I say, thus impelled and combined, a considerable portion of the people of the Northern States are carrying on a systematic *war in disguise* against the Southern States. . . .

And so, what remedy has Virginia now, but reprisals or war? She may have, I trust in God she will have, a better remedy in the return of the sense of reason and justice to the universal mind of the people of the Northern States, and in the prompt enactment by the Federal Congress to give Virginia at least as much security from invasion by Ohio or any other state of the Union as she has from invasion by England or France. If not, then are the days of the great Union numbered, and *then they ought to be numbered.* If not, then I say it is the right, nay it is the duty, of the Southern States to separate from the Northern States and to form a confederation of their own, under which they may enjoy those advantages of national and individual peace and safety at home, which they cannot enjoy under the present confederation, and I exhort them to do so. Nay more, I say, if the people of the Northern States have such irregular consciences that they cannot, or such sectional animosity that they wilfully will not, observe the sacred bond of the Union, then they should unite and negotiate on their own part a peaceful separation from the Southern States, and I hope they will do so. As a citizen of the Northern States, I exhort them to do so. I say to any fellow-citizens of Massachusetts

that if, as so many of you pretend to think, it is a moral duty to make war on the social institutions of the Southern States, then it is your duty to do this openly, frankly, aboveboard, and without any evasive excesses or contrivances. . . .

We of the Northern States have not yet entered upon solemn war against the Southern States, but we have perpetrated, and are systematically engaged in perpetrating, acts of hostility which are the common precursor and the general prelude of all solemn war, everywhere, and which, unless desisted from and repaired, must and will have the inevitable result of disruption of the Union and of Civil War in the United States. There is no man of honor, either North or South, who, whatever he may profess, and however he may strive to shut his eyes to the imminent peril, does not see and know that thither we are drifting with constantly accelerating motion."

In this letter, Cushing has obviously altered his position from that which he took in 1854. In 1859, he does not insist that the Union must be preserved at any cost; now he is willing to admit that a separation between the states may be the only practicable solution of the growing sectional animosity, and he apparently does not view such a possibility altogether with regret. The fact is that his conversations with Davis and other Southerners, joined with his aversion to the abolitionist group, had gradually brought him to a point where his sympathies were partly with the slave-holders and their point of view. His defense of the South at that period, also, was due largely to his respect for the law. The illegality of John Brown's invasion made an enduring impression on him. Violation of the code, the commission of crime for even a laudable end, were repugnant to his nature. The same feeling, no doubt, underlay his aversion to the abolitionists and their doctrine of the "higher law." He felt that government must be carried on in accordance with established and carefully-regulated statutes, and that defiance of

these statutes, no matter for what motive, should be punished, — indeed was little short of treason.

The evolution of events was to lead him to a position even more extreme. On the evening of January 11, 1860, Maine Democrats assembled at Bangor, for the purpose of rebuking sentiment favorable to John Brown. This meeting, held in Norembega Hall, was very successful. Cushing, who had been invited to deliver an address, was unable to accept, but, like Everett and Pierce, sent a letter to be read. This document, prepared by him in the quiet of his study over the Christmas holidays, represents the "farthest South" of his political career. In it he defied the opponents of the Union:

"We have, in the first place, the Abolitionists proper, — monomaniacs of ferocious philanthropy, teachers and preachers of assassination and treason. . . . In the second place, we have in the Northern States the more numerous class of persons, who profess fealty to the Union, and who operate politically within the forms of the Constitution, but who have allowed their minds to be so pre-occupied with the treasonable teachings and preachings of the Abolitionists, as to have entered into a path of systematic assault on the chartered rights of the Southern States, which has no possible issue save the complete overthrow of the Constitution, and the violent disruption of the Union. This line of political action at the North began with hostile declamation and popular agitation against the internal institutions of the Southern states. All such agitation is contrary, of course, both to the letter and spirit of the Constitution, — which assures to each state absolute independence in the regulation of its domestic institutions, without interference on the part of other states. . . . These things are said or done at the North, — these violent breaches of the compact of the Union are committed and justified, — on the assumption that negro servitude is a sin and a moral wrong. If it were so, that would be no justification. . . . But the assumption that negro servitude is a sin is, of course, either an extravagant rhetorical exaggeration, or, if asserted as a literal truth, is a mere untruth. Personal rights,

the question of the greater or less extension of personal liberty, like the question of public rights, as whether republic or monarchy be the better form of government, is of the domain of politics, not ethics. . . . The simple truth is plain, and cannot be denied by any person in the calm and candid exercise of reason. It is a question of political institutions. We at the North, as was our constitutive right, have for ourselves decided the question one way, on the premise of the nature of our population and of our soil and climate; they at the South, in the equal exercise of their constitutive right, have for themselves decided it another way, on the premise of the nature of their population and of their soil and climate. . . .

The late murderous foray of Northern Abolitionists into Virginia, and the endorsement, the canonization, the heroization, the apotheosis, of their head murderer, by so many of both Clergy and Laity at the North, have at length brought all these questions to a practical issue. The Southern States cannot meekly lie down to be trodden upon by the Northern. . . . We know well that they are brave and high-spirited men; and they will, of course, make a stand now in resistance to the further progress of unconstitutional assaults on their domestic rights and their national peace. . . . The South must in this extremity, and, of course, will, defend itself at all hazards, within the Union if it may, and, if not so, then outside the Union."

Cushing's letter, which up to this point had been sufficiently startling in its frank declaration of the Southern purpose, closed with a remarkable prediction, which was ridiculed as preposterous by the Republican press but received, nevertheless, wide publicity:

"If, after that, the two New England States which are soon to hold their annual elections, — New Hampshire and Connecticut, — shall not redeem themselves, — shall not back square out of the *cul de sac* into which they have entered, — if, in fear of recent occurrences, they prove to be persistent in the policy of unconstitutional anti-slavery agitation and legislation in which they, in common with other Northern States, are engaged, it will become all persons in the Eastern States to look after the

condition of their property, to wind up all great local enterprises, to sell out their bank, railway, and factory stocks, and betake themselves to hoarding gold against the day of disaster, as men were accustomed to do in the troubled countries of India and China — and then? Why, all history is there to tell us what then; social convulsions, hostile combats in the town streets, predatory guerrilla bands roving up and down the country, shootings and hangings, in a word, that which we have not yet had, but which all other nations have, — cruel war, *war at home;* and, in the perspective distance, a man on horseback with a drawn sword in his hand, some Atlantic Caesar, or Cromwell, or Napoleon, to secure to the weary world a respite from the dissonant din of the raving ideologies of the hour, and the fratricidal rage they engender; the reason of force to replace the impotent force of reason; and a line of epauletted Emperors to close up the truncated series of the honored Presidents of the United States."

At the moment, there were some who were disposed to scoff at Cushing as a militaristic alarmist; but, as the progress towards secession was accelerated, there were many to recall and quote his phrase about the menace of "the man on horseback" and to watch later the partial fulfilment of his gloomy prophecy. Cushing was no shallow optimist, minimizing the danger arising out of the slavery issue. Not even his sympathy with the South could blind him to the fact that a separation of some kind was now almost inevitable.

As the spring of 1860 drew near, the eyes of most thoughtful Americans were fixed on the approaching Charleston Convention, which had been called for April 26. Cushing had not originally planned to serve as a delegate, but much pressure was brought to bear upon him from various quarters. On September 20, 1859, he wrote to Sidney Webster, from Washington:

"Since my arrival here to-day, I have heard much of the talk of the city from Mr. Eames. I find there that my going to

the Convention is deemed of more consequence than I had supposed. It is regarded as a movement of the Pierce men, — not merely with contingent or possible reference to Gen'l P. himself, but rather in regard to that general interest. I find there is a good deal of thought of Mr. Guthrie *in the second line.*"

Eventually Cushing accepted a place as delegate at large from Massachusetts, together with James S. Whitney (Collector of the Port of Boston), Oliver Stevens (a young Boston attorney), and Isaac Davis, of Worcester.[1] It was common gossip in New England that Cushing was for Jefferson Davis as candidate for President, but he himself succeeded in keeping his ultimate preference well in the dark. He wrote Pierce, February 25, 1860:

"As to the nomination at Charleston, things remain *in statu quo*, but with signs of approaching change. Our weakness at present consists in the want of concentration at the South. On the other hand, Mr. D. has a camp as it were of partisans busy in his behalf, so as to render the personal controversy between Mr. B. and him the dominant part of the situation. But consultations have now commenced among the Southern Senators and others to the end of ultimate concert or coöperation.

Our prospect is good in Connecticut and Rhode Island and hopeful in New York. But down to yesterday, Mr. M. had not received any funds. Mr. Sandley has replied to his letters with brief negatives, without explanation; my explanation of which is the devotion of Mr. S. to Mr. D., who does not desire at present the success of Mr. A. H. It is probable that the gentlemen in New York will, in the course of the next week, supply funds."

As the winter drew to a close, Cushing did not cease

[1] At the State Convention in Worcester, September 15, 1859, Benjamin F. Butler was nominated by the Democrats for Governor. The vote for delegates at large was Davis, 1063; Cushing, 807; Whitney, 793; Stevens, 775. The Convention refused to declare itself for any Presidential candidate.

his efforts to present the situation as he saw it to the voters of New England. On March 12, he spoke at a Democratic rally in New Haven, in support of the gubernatorial candidacy of his old Mexican War comrade, Thomas H. Seymour. The real question at issue was, he said, whether the Union should endure; or, as he put it, "whether the people of the Northern States shall persevere year after year in angry, vicious, mischievous, ill-directed, ill-tempered intermeddling with the social institutions of the Southern States." He tore to shreds the doctrines of Helper's *Impending Crisis*, especially the theory that the negroes in America should be deported to Africa. There was a grim humor in this speech which made the audience laugh, but the undertone was serious and solemn. Two weeks later he delivered an address in Hartford, in the course of which he exhorted his hearers to stand by the Constitution and the Union.

In easy stages, Cushing moved southward towards the Democratic Mecca at Charleston, noticing with dismay as he went that the party was, for the first time in many years, facing a schism. One faction, headed by Stephen A. Douglas, stood firm on the principles of "popular sovereignty"; the other, or extremist group, took as its guide the doctrine of the Dred Scott decision, — that "the right of property in a slave is distinctly and expressly affirmed in the Constitution," and that, therefore, slavery, under the Constitution, naturally spread over each new territory as it was formed, and could be abolished only by the government of individual states. To this latter, and more radical, wing, Caleb Cushing belonged, his chief associates being Jefferson Davis and William L. Yancey. An adherent of Douglas during the passage and attempted enforcement of the Kansas-Nebraska Act, Cushing had, like him, boldly declared in 1857 that

"popular sovereignty" was not inconsistent with the Dred Scott decision. But Douglas, to the disgust of the Southerners, had done his utmost to give Kansas a fair chance to indicate the real desires of her legitimate settlers, and when, partly through his assistance, the Lecompton project was defeated and Kansas was thus lost altogether to slavery, he could no longer count on the backing of slave-holders for the Presidency. In his so-called "Freeport Doctrine," drawn from him by the shrewd questioning of Abraham Lincoln, Douglas had practically repudiated the Dred Scott doctrine, thus losing the support of the less conservative Democrats, of whom Cushing was certainly one. As for Cushing, he accepted the Dred Scott decision as the final settlement of the matter. In the spring of 1860, Douglas was, of course, a candidate, and a strong one, for the Democratic nomination; but his support came largely from the Northern branch of the party, and even there men like Cushing were sure to oppose his ambitions. Nothing was more logical or inevitable than the conflict between the views of Douglas, who, in spite of his weaknesses, at heart desired an equitable solution of the controversy, and those of Yancey, whose principal desire was to preserve and extend the institution of slavery.

Most of the New England delegates took passage on the steamship *R. R. Spaulding* from Boston Harbor, sailing on April 13, with Gilmore's band aboard and a large quantity of the choicest liquors for the refreshment of the passengers. Cushing joined the party at Baltimore, having been busy in Washington for several days arguing the important case of Richardson *vs.* the City of Boston. When he reached Charleston on Saturday, April 21, he found that six of the Southern delegation had agreed among themselves to withdraw in a body unless a

resolution were adopted favoring Congressional protection of slavery in the territories. He himself, when he saw the situation, at once resolved to effect, if possible, some sort of compromise, and, to this end, exerted his influence to promote the claims of his former colleague, Guthrie, and of Franklin Pierce, either one of whom could be trusted to help the South without intentionally alienating the North. As the guest of Governor Allston, of South Carolina, Cushing had an opportunity to meet socially and to confer with most of the distinguished delegates, and incidentally to get a very clear idea of the trend which events were taking.

When the Convention assembled on Monday morning, in the Hall of the South Carolina Institute, the Committee on Permanent Organization named Caleb Cushing as Permanent President. Called to the chair on Tuesday, he was received with an ovation, a tribute to his prestige and experience, in which even the Douglas delegates, who recognized his hostility to them, felt constrained to join. Murat Halstead, a reporter at the convention, described him as he appeared on the platform:

"He was dressed in a short brown sack suit, grey pants, and black satin vest. Considering the amount of intellectual labor he has performed, he seems in a remarkably fine state of preservation. He is partially bald, but not at all grey. Such hair as he possesses has all the gloss of youth and bear's grease. He uses a plain eye-glass, suspended about his neck by a black ribbon. His hands are brown as a laborer's. He evidently preserves himself by out-door exercise. His head is round and lofty; the forehead high and full; nose straight and sharp; lips thin, and expressive of intellectual consciousness and pluck, and his face shows very few wrinkles. His voice is clear, musical, and powerful; every syllable of his speech was heard in every part of the house. The Convention is fortunate in having a presiding officer so accomplished."

The auditorium in which the sessions took place held at least three thousand people. The floor was perfectly level, with old-fashioned wooden-bottomed chairs for seats, exceedingly uncomfortable for the numerous ladies who were present as guests. Unfortunately the building was on the main street of the city, near the business center, where the noise of passing vehicles was likely at any moment to drown the voices of the speakers. This difficulty was removed on the second day by heaping sawdust on the thoroughfare in front of the door. The heat was at all times oppressive, and most of the delegates sat in their shirt-sleeves, waving large palm leaf fans and praying for a breath of cool air.

With his long training in legislative bodies, Caleb Cushing made an admirable chairman, never allowing his political predilections to interfere with his sense of fairness. Halstead, after watching his decisions, wrote:

> "Mr. Cushing's head is wonderfully clear, and his knowledge of Parliamentary law, — and the rules of the House of Representatives, — perfect. All his statements of the questions that are before the House are distinct and downright, and no one thinks, as yet, of taking an appeal from his verdict."

In accepting the honor of presiding officer, he made a tactful and pleasant speech, calling on the delegates to do their work in a prompt and orderly fashion. But it was a difficult body to control, and he had his hands full in suppressing irate and noisy orators. Few men but him could have kept the surge of political rivalry within bounds.

The first real clash of the opposing factions came on the fifth day, when the Committee on Resolutions presented a majority report containing the principles of the Cincinnati Platform of 1856, with an additional section

approving the Dred Scott decision and specifically stating that "Congress has no power to abolish slavery in the territories" and that "the Territorial Legislature has no power to abolish slavery in any territory, nor prohibit the introduction of slaves therein, nor any power to exclude slavery therefrom, nor any power to destroy or impair the right of property in slaves by any legislation whatever." This section, representing the extreme Southern view, had been passed in committee by a vote of seventeen to sixteen, taken, of course, by states. It was naturally distasteful to the Douglas party, who, in turn, presented a minority report, simply pledging the Democrats to abide by decisions of the Supreme Court, whether already made or to be made; this was, of course, to fall back on the idea of "popular sovereignty." A wrangle followed the presentation of these reports. The anti-Douglas men, realizing that they were in a minority on the floor, resorted to filibustering tactics, using the common expedients of frequent motions to adjoin, proposals to lay the entire matter on the table, and personal explanations. Without at any time committing an injustice, Cushing ruled regularly in their favor. So great was the disorder at one session that Cushing was obviously irritated, and even threatened to withdraw. After one especially noisy debate, he said:

"The Chair will entertain no motion until the Convention is restored to order, and when that is done, the Chair desires to make another suggestion to the Convention. The Chair has already stated that it is physically impossible for him to go on with the business of the Convention so long as one-half the members are upon their feet and engaged in clamor of some sort or other. The Chair begs leave to repeat that he knows of but one remedy for such disorder, and that is for the presiding officer to leave the chair. He, of course, would deeply regret that painful necessity, but it would be a less evil than that

this incessant confusion and disorder, presenting such a spectacle to the people of South Carolina, should continue to prevail in this most honorable body of so many respectable gentlemen of the highest standing in the community, engaged in debate and deliberation upon the dearest interests of the country."

A recess having been taken over Sunday, the matter came to a vote on Monday morning, with the result that the Minority, — or Douglas, — Report was adopted by a vote of 165 to 138.[1] Popular sovereignty was, for the moment, triumphant, — but only for the moment. As soon as the ballot was over, Walker, of Alabama, instructed by his state delegation, presented a written communication to the Chairman, withdrawing that delegation from the Convention, in strict accordance with resolutions under which they had been chosen. In their protest, they said:

"The points of difference between the Northern and Southern Democracy are:

First, as regards the *status* of slavery as a political institution in the Territories, whilst they remain as Territories, and the power of the people of a Territory to exclude it by unfriendly legislation.

Second, as regards the duty of the Federal Government to protect the owner of slaves in the enjoyment of his property in the Territories, so long as they remain such.

The Convention has refused, by the platform adopted, to settle either of these propositions in favor of the South. We deny to the people of a Territory any power to legislate against the institution of slavery, and we assert that it is the duty of the Federal Government, in all its departments, to protect the owner of slaves in the enjoyment of his property in the Territories."

Mississippi, Texas, and Florida followed the example

[1] All the New England states voted "Yea," except Massachusetts, whose delegation was divided, — "Yea," 6, "Nay," 7. It was understood that Cushing, Whitney, and B. F. Butler all voted against the report.

of Alabama; and with them went a majority of the delegates from South Carolina, Georgia, and Arkansas. In each case the seceding group presented a signed communication justifying its action on the ground that a numerical majority of the convention had, by rejecting the majority report of the Committee on Resolutions, usurped the prerogatives of the states. Meanwhile the feeling grew more bitter. Several bouts of fisticuffs took place in the hall, and the aisles were frequently blocked by excited throngs. That evening the seceders held an outdoor meeting, addressed by Lamar, of Mississippi, and Yancey, of Alabama, at which cheers were given for an "Independent Southern Republic."

On Tuesday, May 1, the Convention reassembled, opening with an eloquent prayer for harmony by the Reverend Mr. Ingersoll. Of the 303 delegates who constituted the original convention, fifty-one had now withdrawn, leaving 252 to carry on its business. As the session began, Cushing, whose heart was certainly with the seceders, expressed in his countenance a sense of the difficulties which he was confronting; but some friend had covered his desk with red roses, in which he frequently buried his face as if to seek relief from the disorder in the auditorium. In the afternoon, on motion of Howard, of Tennessee, the Convention decided that no one should be nominated without a two-thirds vote of all the elected delegates. This decision was obviously favorable to the anti-Douglas group; for, although Douglas could probably control two-thirds of those actually voting, he would find it a more difficult task to secure two-thirds of the entire number. As Fite points out in his excellent monograph on *The Presidential Campaign of 1860*, this practice had not been followed in previous Democratic conventions; and it was adopted largely as a concession to the

South, which threatened to secede as a whole from the gathering if the ruling were not accepted.

Nominations for the Presidency were now in order. King, of Missouri, named Douglas; Caldwell, of Kentucky, nominated James Guthrie; the other candidates whose names were placed before the convention were Daniel S. Dickinson, Robert M. T. Hunter, Andrew Johnson, and General Joseph Lane. No formal speeches were made, the practice being then different from what it is to-day, when carefully selected "spell-binders" attempt to arouse prolonged demonstrations of applause. There were still sixty-nine delegates from slave states in the hall, and, if a nomination could be made, it would have the stamp of authority. On the first ballot, Douglas received 145½ votes, Hunter being a poor second with 42; but, according to the resolution of the convention and Cushing's ruling as Chairman, 202 votes were necessary for a choice. As a matter of fact, Douglas had not been given even two-thirds of those actually voting, and could not, therefore, have been chosen on any ruling requiring a two-thirds vote, — and the two-thirds rule had been in use by the Democrats since 1832, and had become a recognized Democratic practice since the nomination of Polk in 1844. In spite of this fact, the Douglas men proceeded to vent their wrath on Cushing, whom they chose to regard as responsible for their discomfiture. A contemporary political bard in the Douglas camp, in portraying the various Southern leaders, wrote:

"A poisonous reptile, many-scaled, and with most subtle fang,
Crawled forward Caleb Cushing, while behind his rattles rang."

It took more than criticism and bad verses to disturb Cushing's composure. All through the evening the roll-calls continued, twelve ballots being taken before ad-

journment; and, on the following day (Wednesday) forty-five ballots were counted without result, Douglas never getting more than 151½ votes to Guthrie's 65½. There were moments when it seemed possible for Cushing to be himself accepted as a compromise candidate, and probably a very slight matter would have tipped the beam on his side; but, as evening fell, those who counselled postponement found ready listeners. On the next morning when the deadlock seemed certain to continue, the Convention voted to adjourn until June 18, at Baltimore. It had been the longest political convention up to that time in our history. Before the final adjournment, Cushing addressed the delegates briefly, concluding as follows:

"Permit me to remind you, gentlemen, that not merely the fortunes of the constitutional party which you represent, but the fortunes of the Constitution also are at stake on the acts of this Convention. During a period of eighty-four years, we, the States of this Union, have been associated together, in one form or another, for objects of domestic order and foreign security. We have traversed side by side the wars of the Revolution and other and later wars, — through peace and war, through sunshine and storm. We have held our way manfully on until we have come to be a great Republic. Shall we cease to be such? I will not believe it. I will not believe that the noble work of our fathers is to be shattered, — that this great Republic is to be but a name, but a history of a mighty people once existing, but existing no longer save as a shadowy memory or a monumental ruin by the side of the pathway of time. I fondly trust that we shall continue to march on forever, the hope of nations, as well in the old world as in the new, like the bright orbs of the firmament, which roll on without rest, because bound for eternity, — without haste, because predestined for eternity. So may it be with this glorious Confederacy of States. I pray you, therefore, gentlemen, in your return to your constituents, and to the bosoms of your families, to take with you as your guiding thought the sentiment of the Constitution and the

Union, and with this I cordially bid you farewell until the prescribed reassembling of this Convention."

Meanwhile the seceding delegates, who had remained in Charleston awaiting the outcome of events, had a formal meeting, voted not to adopt a new party name or a separate platform, and agreed to adjourn to Richmond for a meeting on June 11.

Aside from the enmity which he had incurred from the prejudiced Douglas delegates, Cushing had won golden opinions at Charleston. The Boston *Post* correspondent wrote, April 30, with complete truth:

"Mr. Cushing has discharged the very onerous duties of the Presidency with consummate ability and with a strict regard for the rights of all, which is not always, I may perhaps say, to be expected in an assemblage where there is apt to exist such a confusion of interests. . . . His decisions have been clearly and promptly given, and whatever their length they have been listened to with profound attention as coming from one whose opinions on almost any subject were entitled to great favor."

In deciding a point of order, as he had frequently to do, he was accustomed to give in some detail the reason for his ruling, but this was no serious defect in a convention which was so unruly. Only one delegate seems really to have lost his temper with the Chairman. This was Gittings, of Maryland, who, after having been repeatedly declared out of order, arose and roared, despite the pounding of the gavel:

"Only one word, sir. I want to be heard. The only time I ever remember to have seen our worthy Chairman before was in 1840, when he made one of the most violent Whig speeches I ever heard."

Some anxious weeks ensued for those who were struggling to bring about Democratic unity. The nomi-

nation of Lincoln on May 21 made it more than ever desirable to avoid any open break between the Northern and Southern wings of the Democratic Party; but there seemed to be no sound basis for compromise or reconciliation. It was recognized that a split in the Democratic Party would be a significant first step towards the separation of the Southern States from the Union; yet neither side was willing to yield an iota. Howell Cobb, the Georgia political leader, said:

> "It can not be disguised that both the safety of the South and the integrity of the Union are seriously threatened. It is my honest conviction that the issue depends upon the action of the Southern people at this important juncture."

The South, however, refused to make or to welcome overtures. In nearly every case the seceders from the Charleston Convention were reappointed as delegates to Baltimore by their respective states. It was this situation which again precipitated a crisis and effected a break which could not be repaired.

Caleb Cushing, with his customary industry, had attended in person to most of the preliminary arrangements for the Baltimore Convention. He arrived in that city as early as June 8 to secure a suitable auditorium. Several pages of notes and sketches indicate that he had inspected and considered every available place, and that he had even given consideration to a proposal to erect a huge "wigwam," like the one in Chicago. He finally selected the Front Street Theatre; and there, on Monday, June 18, the Democrats reassembled, with full delegations from all the states present at the date of adjournment in Charleston. The question of credentials, which arose at once, proved to be complicated. After calling the convention to order, Cushing stated the situation with

regard to delegates from the Southern States, and then went on to make an appeal for harmony. He had not, he said, deemed himself authorized to consider or decide any matter of credentials, but had assumed that all the delegates carried upon the rolls as members at the time of the adjournment were still to be recognized as qualified.

The Committee on Credentials did not report until the fourth day, the intervening time being consumed with wrangling over technicalities. It appeared that Florida and South Carolina had sent delegations to Richmond, but not to Baltimore, being determined to have nothing to do with the Baltimore Convention unless there should be some indication of its willingness to abandon Douglas. The original group of delegates from Arkansas and Georgia came north with credentials to both conventions, but presented them at Baltimore only, and were accepted; the same was true of the representatives from Mississippi and Texas, who were accepted but denied preferred seats.

Krum, of Missouri, presented the majority report of the Committee, favoring the Douglas delegates, but an equally detailed minority report was submitted by Stephens, of Oregon, representing the anti-Douglas point of view. On the full committee of twenty-five members, fifteen voted for the majority report, and nine for that of the minority, one member agreeing fully with neither. The items of the majority report were considered one by one on the floor and decided as the Douglas supporters desired, they having a working majority of the convention. The vote with regard to the Louisiana representatives was typical, the Douglas delegates receiving 152 votes to 98 for the seceders.

When Alabama was brought up, the seceding delegates were rejected, 148½ to 101½.

While this was going on, Baltimore was like a beehive. Rival mass-meetings were called in the same public square for the same hour, with the result that Douglas men jostled their rivals until the police had to be called into action. Bands played almost continuously, and fireworks were shot off every evening. On the night of June 20, the fiery Yancey made a speech in Monument Square, to which thousands were attracted.

Cushing was thoroughly in earnest in his wish to secure harmony, but his task was hopeless from the start. As soon as the voting on separate propositions was completed, Russell, of Virginia, announced that a large majority of the delegates from that state had resolved "that it is inconsistent with their convictions of duty to participate longer in the deliberations of the convention." He was followed on the floor by representatives from other states, some announcing their intention to withdraw, others giving their reasons for remaining. Some delegations retired for consultation, as did Tennessee, nineteen of whose representatives decided to go and five to remain. In general, the choice was made on the basis of adherence to Douglas. Cushing conscientiously kept order throughout this babel, but was evidently considering what his own course should be. On Saturday morning he was grave, constrained, and distressed in manner. When the previous question was called on a motion to proceed to the nomination of President, he suddenly paused to address the Convention. For the first time the hall was absolutely quiet, and a certain solemnity seemed to pervade the great auditorium. Excited and pale, Cushing seemed struggling to keep himself under control as he spoke:

"I beg the indulgence of the Convention to say that, while deeply sensible of the honor done me by the Convention in placing me in this chair, I was not the less deeply sensible of the difficulties, general and personal, looming up in the future to environ my path. Nevertheless, in the solicitude to maintain the harmony and union of the Democratic Party, and in the face of the retirement of the delegations of several states, I continued at my post, laboring to that end, and in that sense have had the honor to meet you, gentlemen, here in Baltimore. But circumstances have since transpired which compel me to pause. The delegations of a majority of the States of this Union have, either in whole or in part, in one form or other, ceased to participate in the deliberations of this body. At no time would any consideration of candidates have affected my judgment as to my duty. And I came here prepared, regardless of all personal preferences, cordially to support the nominations of this convention, whosoever they might be. But under the present circumstances, I deem it a duty of self-respect, and I deem it still more a duty to this Convention as at present organized, — I say I deem it my duty in both relations, while tendering my most grateful acknowledgements to all gentlemen for the candid and honorable support which they have given the Chair, even when they differed in opinion upon rulings, and while tendering also the gentlemen present my most cordial respects and regards, not knowing a single gentlemen upon this floor as to whom I have other than sentiments of cordiality and friendship, — I deem it my duty to resign as presiding officer of this convention. I deem it my duty to resign as presiding officer of this convention in order to take my seat on the floor as a member of the delegation of Massachusetts, and to abide whatever may be its determination in regard to its further action in this convention. And I deem this above all a duty I owe to the members of the convention as to whom my action would no longer represent the will of the majority of the convention."

With these words, Cushing stepped down from the platform and took his seat with the Massachusetts delegation; while the Douglas followers, glad to have had their way, outstepped proprieties by giving cheer after

cheer. Governor David Tod, of Ohio, then assumed the Chair, having been selected by the Vice Presidents. Benjamin F. Butler at once rose, was recognized by the Chair, and announced that he and certain other Massachusetts delegates could no longer participate in the Convention. Although interrupted by cat-calls and hisses, he kept perfectly cool, and, when he had finished, he, with Cushing and others, strode down the long aisle and abandoned the meeting.

Cushing's withdrawal from the platform was the signal for the delegates to break loose from restraint. A correspondent of the Washington *Star* said:

> "From the moment President Cushing declined to preside over the proceedings, those proceedings became simply the acts of a mobbish mass-meeting without the government of any rules other than the momentary will of the most brutal and brazen-lunged who took part in the uproar before the stand. . . . Mr. Tod proved wholly unequal to the task. . . . Though the authority of President Cushing has always been obeyed most remarkably, that of Mr. Tod was as abortive of results other than to increase the confusion and the rule of brute force as an attempt on his part to exercise similar authority over as many drunken Comanches would have been."

In spite of the disorder, however, the balloting for President went on, Douglas receiving 173½ votes on the first trial. During the roll-call Stevens, of Massachusetts, explained that, although some of the representatives from his section had withdrawn, he was instructed by the remaining members to cast the vote of that state as a unit for Douglas. When, on the second ballot, Douglas received 181½ of the 194½ votes cast, it was at once moved that Douglas be declared nominated by a unanimous vote, and the resolution was quickly carried. The ruling of the Charleston Convention that 202 votes, or

two-thirds of the full convention, were necessary to a choice was thus abrogated. After Benjamin Fitzpatrick, of Alabama, had been nominated as Vice President, the Convention adjourned late on Saturday evening.

On Monday, the 24th, the bolters, joined by most of the Southerners who had left the Charleston Convention, assembled in the Maryland Institute, twenty-one states being represented, of which five only, however, had full delegations. Caleb Cushing was at once chosen Chairman, and a scene of wild enthusiasm followed, as described by Halstead:

"The name of Caleb Cushing was received with applause that reminded me of Chicago. Hats and handkerchiefs were waved all around the great circle of the galleries, and over the heads of the crowds upon the floor. A committee was appointed to wait upon Mr. Cushing. The committee did not have far to proceed to find that gentleman, and in a few minutes were seen escorting him down the long passage, fenced from the multitude with settees, leading him from the door to the seats reserved for the delegates and the platform. Cushing's person has, during his presidency over the deliberations of the convention, become very well known. He was therefore instantly recognized by hundreds, and his familiar blue coat and brass buttons, his Websterian garments and Caesarian head, were hailed with extraordinary acclamation. He marched through the lane of yelling Southerners, hats whirling and handkerchiefs waving over his head, while the occupants of the galleries leaned forward, and shouted and clapped their hands, swung their hats, fluttered handkerchiefs, and, as he mounted to the platform, Mr. Russell, of Virginia, took him by the hand, the Convention and the crowd gave him 'three cheers,' and Mr. Russell mentioned that he 'resumed' his seat as Chairman of the National Democratic Convention."

Then Cushing, — "roses on his cheek, pride in his port, fire in his eye," — stepped forward and made a brief response. His voice sounded out clear and loud to

the rear of the hall, and gave the convention a tone of regularity. Some such reassuring omen was needed, for deep in their hearts the delegates realized that the Democratic Party was at last wrecked on the reef of the slavery question. Cushing himself doubtless sensed the impending disaster; but he stood among his Southern friends and went courageously, even audaciously, towards ruin. To the spectators he seemed smiling, jaunty, jubilant; his demeanor made every one else good-natured. The decision had relieved his mind, and smoothed out the lines of care in his forehead.

The seceders did everything in their power to repudiate Douglas and his beliefs. Without much ado, they adopted the platform reported by the committee majority at Charleston, denying the right of Congress to interfere with slavery in the territories. John C. Breckinridge, of Kentucky, then serving as Vice President under Buchanan, was nominated for the Presidency. Cushing himself had been urged to accept the nomination for Vice President, but refused to allow his name to be used; instead, Joseph Lane, of Oregon, another Mexican War veteran, was unanimously chosen. Yancey, the fire-eater of the Cotton States, was then called upon for a speech and proceeded to denounce in stinging phrases the Douglas wing of the party. Avery, of South Carolina, offered a resolution of thanks to Cushing for his services as presiding officer, and, when the latter rose to acknowledge the compliment, he was greeted again with extravagant applause. The seceders were not altogether happy. They were quite conscious of the danger in the step which they had taken, and Cushing had helped by giving them confidence. On June 25, Cushing wrote Breckinridge, formally notifying him of his nomination, and the latter replied in a letter which made it clear that he was

prepared to assert himself as the standard-bearer of the uncontaminated Democracy.

Cushing lingered in Washington until late July, attending to some legal work, and it was whispered that he would be given a place on the Supreme Bench,[1] — it being even said that it had been promised him as a reward for his part in preventing the nomination of Douglas. A press despatch for July 26, however, stated that Cushing's aspirations were in a different direction. The fact is that he was never offered the position. When his business in the capital was finished, he returned North with a saddened heart. Although his sympathies were with the Southern people, he was not, like them, resigned to seeing the Union dissolved on the slavery issue. With his strong feeling of nationalism, his lofty conception of the mission of the United States, he could not bear the thought that the Union should cease to be. He had also to endure the strain of personal unpopularity. One morning in June, in Haverhill, some Douglas Democrats suspended an effigy across Merrimac Street, labeled, "Caleb Cushing, a Traitor to his Country and his God," but it was cut down early in the day by a friend. Signs of this kind of resentment were to be only too common as the year went on. Then, too, his enemies filled the newspapers with quotations from his former speeches in Congress when he was presenting abolitionist petitions, and taunted him with inconsistency.

Cushing, nevertheless, put on a bold front, — "vaunting aloud though rack'd with deep despair," — and

[1] Judge Peter V. Daniel died on May 30, 1860, and Cushing was considered by Buchanan for the vacancy. Eventually, however, the President appointed Jeremiah S. Black, his Secretary of State, who was rejected by the Senate in February, 1861. The place was not filled until Lincoln's administration.

showed no sign of weakness. In August, exhausted from his excessive labors, he had another of his attacks of illness, which confined him to his house for nearly a month; but in September he was able to appear in Tremont Temple at a mass-meeting of Breckinridge Democrats. The night was unpropitious and the rain fell in torrents; nevertheless the hall was packed with people, for it was Cushing's first public address in New England since before the Charleston Convention. His argument on this occasion is worth a summary, especially because it struck the note of many of his later speeches on the eve of Civil War.

The existing prosperity of the United States was due, he said, to certain well-known geographical and social conditions: one-half of our states are "in the temperate regions of America, adapted to European labor"; the other half are "in a semi-tropical region, where colored labor, and that alone, and that only with Europeans to govern and to direct, can produce the great colonial cereals." And yet we are unhappy! Unhappy because public men declare that this existing system of free white labor in the temperate zones and colored labor in the torrid zones is an "unspeakable misfortune." This body opposed to slavery is made up of three groups: men like Seward, who "profess to think that the Constitution forbids them to meddle with slave labor within the States, yet are constantly meddling with it"; men like Spooner, "who think the Constitution authorizes and requires them to meddle, and therefore do it"; and men like Wendell Phillips, who "think the Constitution stands in their way, and therefore attack the Constitution." Of the three groups, Cushing thinks that represented by Phillips the most honest and consistent, and that headed by Seward and Lincoln the least sincere. Cushing then

makes a bitter attack on the motives of the recently formed Republican Party, which he calls entirely sectional, with both its candidates chosen from the Northern States. Is it possible to prevent the election of Lincoln? Yes, but only by supporting Breckinridge, who starts with a sure one hundred and twenty electoral votes from fifteen Southern States. Douglas is simply dividing the Democratic party; he cannot be elected. Bell [1] is merely dividing the South; he has no chance of success. Only Breckinridge can stem the onslaught of abolitionism. Finally, the election of Breckinridge is the only true and sure means of perpetuating the Union, for "his election, and that only, will tranquilize the Southern States, and dispel every image of dissension or secession." He concluded:

"Therefore, I say, the real issue before the country is of the continued existence of slave labor with the states. All the conspicuous current party-issues, and especially the several territorial questions, are but the timid touches of men at a great thing, which they have not the manliness boldly to grasp and handle. And the Republican Party has been conceived, born, and nurtured into strength in order, if possible, to force or seduce the Federal Government into abolitionism, or else the Republican Party is a monstrous and ridiculous abortion, a gigantic falsehood, swindle, and fraud. And I reassert confidently, if Mr. Lincoln is elected, the Republicans will have to burst up at once, or to attack the domestic rights of the states.

What, then, will the people of the Southern States, attacked in their constitutional rights, their domestic peace, their property, and their persons, do? What will they do? Will they passively submit to be the conquered subjects of New England?

[1] John Bell and Edward Everett had been nominated on the ticket of the Constitutional Union Party, which met on May 9, in Baltimore. The party was composed of former Whigs and Americans, and made up for its weakness in numbers by its undeniable respectability.

No! I do not hope or fear, believe or doubt, what they will do, — *I know;* they will defend themselves to the utterance, first with constitutional means, and then, if necessary, with extra-constitutional means; and if they were not to do it, they would be recreant to the blood of Washington, of Henry, of Carroll, of Rutledge; they would be unworthy the name of Americans."

Here, then, for the first time in public, Cushing appeared as the potential defender of secession. Undoubtedly his close association during the previous months with Yancey, Davis, and other of the more radical Southern group had assisted in modifying his opinions; but it is equally true that his justification of the South in its proposal to withdraw from the Union was a natural and logical development from his theory that Congress has no power to interfere with slavery in either states or territories.

A more closely reasoned argument was that presented in his famous Norembega Hall speech, on October 2, in Bangor, Maine, — a cool and unimpassioned statement of the Southern case, without exaggeration or rhetoric. Cushing assumed, at the beginning, that the great question of the day was that of negro servitude, which, in turn, had focused on the matter of slavery in the territories. In strict legal fashion, he went on to demonstrate that "popular sovereignty," — or local self-government, — must, when it is exercised, base its policy on the Constitution of the United States. But, he contended, Congress has no power whatever to exclude slavery from any territory; and he went on to quote a long list of Supreme Court rulings, closing with the famous case of Scott *vs.* Sandford. Admitting fully the power of any state to establish or to abolish slavery by its Constitution, he nevertheless denied this right to a territorial legislature.

In conclusion he maintained that the doctrines of the Maryland Institute Convention were those of the true Democratic Party, and "will prevail as the only possible creed of a National Democratic Party in these United States."

In this notable address, so different in tone from his other utterances, Cushing said nothing of any possible secession movement on the part of the South. He was aiming simply to present in clear and cogent form an *apologia* for his political faith. It is significant, of course, that he made no attempt whatever to deal with the moral issues so emphasized by abolitionist leaders; indifferent to the injustice and barbarism of negro servitude, he treated it solely as a problem of political expediency or legality. It is in this respect that his argument seems lamentably weak.

This speech was also significant because it again drew attention to Cushing's shift of ground since the passage of the Kansas-Nebraska Act in 1854. He had, as we have seen, lent his support to this measure, and had publicly lauded the Douglas doctrine of "popular sovereignty." In his Ashland address, April 12, 1856, while he was still a member of Pierce's cabinet, he had said explicitly:

> "In all parts of this Union, it must become the unanimous conviction of the people of these United States that whether a State in this Union is or is not to regulate labor in this or that manner, depends upon the will of the people of that State or Territory."

Four years later, at Bangor, he had obviously altered his views, for he said:

> "Gentlemen, to this point, then, we have arrived; on the one side stand reason, history, judicial decision, fact, and truth;

on the other side, two idols, two idols of gilt brass, called 'non-intervention' and 'popular sovereignty,' which are set up on high, and which all men are called upon to fall down and worship, but which it needs only to rub to show their worthlessness."

The fact is that these utterances represent two periods of rapidly shifting Southern opinion. From a purely defensive position on slavery, Jefferson Davis and his followers had advanced to a vigorously aggressive one, Caleb Cushing moving in their train. It was now no longer sufficient to let a territory decide for itself, as Douglas had proposed; slavery was now to be declared lawful, under the Constitution, in every territory, until that territory had become a state, and, as a state, had rejected negro servitude.

Throughout the fall campaign Cushing fought valiantly to defeat Republicanism. On a platform condemning the Republican Party as "the growth of all ULTRAISMS of recent times," Benjamin F. Butler; of Lowell, had been nominated for Governor by the Breckinridge Democrats, and Cushing supported him. He wrote to the New York Union Committee, in response to a request that he would deliver an address at Cooper Union, a letter of declination, in which he made a statement stronger than any he had yet made on the subject:

"A spirit of sour fanaticism, of bigoted propagandism, of insane zeal to force on the Southern States our particular social system, seems to animate the Northern States, and desperately to impel them on to drive the Southern States to secession, — a disaster for which, if it should happen, there is no remedy by any law of the land, no remedy by any provision of the Constitution, and no consummation save either an agreed dissolution of the Union, or a sanguinary civil war in the vain effort of the North to subjugate the South."

Essentially Cushing was altogether in a false position. He did not approve the threats of secession made by Yancey and other Breckinridge supporters. Indeed Breckinridge himself had repelled such a possibility, saying:

> "The man does not live who has power to couple my name successfully with the slightest taint of disloyalty to the Constitution and the Union."

And yet Cushing was allied with a group from which the first attack on the Union was bound to come. The weakness of his position was exposed by Nathaniel Macon, his old Southern associate, who, in the ninth of his *Letters to Charles O'Conor*, dated October 5, 1860, rejected entirely Cushing's Bangor argument on the ground that it did not go far enough, and added that the South would be satisfied with nothing short of a complete justification of slavery, not only as an economic but also as a moral good. To this length Caleb Cushing would never go.

The campaign of 1860 was never really much in doubt. The Republicans, like the Whigs in 1840, had been confident from the start. Their opponents were divided, fighting themselves almost as violently as they battled the common enemy. The October elections in the great states of Ohio, Indiana, and Pennsylvania made a Republican triumph practically certain. The final figures proved Cushing's fallibility as a prophet: Breckinridge, far from coming in first, ran a poor third, securing only 847,953 popular votes to Lincoln's 1,857,610 and Douglas's 1,365,967. Had the Democrats been able to avoid a schism they might have elected their candidate; it was the question of slavery which weakened their party and elected Lincoln. In Massachusetts, Cushing's old

opponent in the General Court, John A. Andrew, won by a huge majority over Butler. Everywhere in the North the Republicans were victorious, and Caleb Cushing viewed with saddened eyes the spectacle of a once glorious party now completely disrupted.

Election Day fell on November 6. Before the next morning dawned, Caleb Cushing had gone through many anxious hours. He was in Newburyport at the time, and one of his friends describes him as he saw him pacing nervously up and down, hoping against hope that the news could not be authentic. His future course, even to himself, seemed uncertain. The Southern papers and his political friends in the Cotton States began at once to preach secession, and Cushing for a few weeks defended their right to "go in peace." In a series of three speeches in his native city, he appeared before his fellow-citizens, voicing his convictions with a courage and a daring seldom equalled in many better causes. On the Monday before Thanksgiving he addressed an audience of over a thousand persons in the Newburyport City Hall. His theme was an impassioned plea for the Union. The Union is in danger. Why?

"We in Massachusetts do not doubt, — we know, — that the danger is produced by the wish, purpose, attempt, of a great party at the North to act against slavery in the South, in contravention of the rights of the Southern States. . . . The expression at the North of the sentiment of opposition to slavery at the South has produced among the people of the latter a sentiment of angry rejection of our officious advice, where it is advice only, and of still angrier repulsion of it when it passes from advice to act, and becomes, according to their belief, unconstitutional interference with their rights in the Union. . . . So finally we become heated on both sides, our blood is up, and all of a sudden we awake to a perception of the fact that we no longer have the common attachments of a common country;

and then it is but a step, — nay, it is but an accident of the error of some state, or the madness of some individual man, — which separates us from civil war, revolution, consummated dissolution of the Union."

Is it possible to escape disunion? Not while the Republican Party, — on which Cushing lays all the blame, — is in power. But if the Southern States secede, what can we do? There is, he asserts, no power in the Federal Government, according to the Constitution, to coerce the return of any such state, or states, into the Union; they must be allowed to choose their own destiny. In concluding, Cushing spoke with much sadness of his own personal situation. He denied the slander that the *James Gray*, a vessel owned by himself and his half-brothers, had, by their orders, raised the palmetto flag in the harbor of Charleston. He then went on:

"I am . . . of that small minority of the people of the State, who obstinately refuse to obey the popular will, and to bend the knee before the Black Calf of Abolitionism. It is true, the 'man on horseback,' with his drawn sword in his hand, has made many a long stride in advance towards us during the past year. It is very easy to foresee the days of civil proscription and bloodshed, such as those of the ancient and medieval republics, not far off, unless the intensity of political and sectional hostilities, which now prevail among us, be assuaged and subdued; and if they be not, then my chances of proscription, — of exile or axe, — are about as good as anybody's in the Commonwealth.

I am a born citizen of the State of Massachusetts. She is dear to me as the land of a long line of ancestors not unhonored in their day and generation; as the home of myself and of beloved kindred and friends; and the sod in which the ashes of others yet dearer to me repose. . . . If, condemning and withstanding the sectional and abolition delirium which has seized upon the mind of Massachusetts, corrupting her conscience, perverting her religions, distorting her morality, poisoning her

law, extinguishing her patriotism, misguiding her conduct, and hurrying her and the Union together on to swift destruction, — if, in condemning and withstanding all this, it shall be my doom to be proscribed here, Massachusetts will not be the less dear to me as my fatherland; and if doomed to die in exile from her, then shall it at least be said of me, —*Dulces moriens reminiscitur Argos.*"

On December 1, continuing his presentation of the case as he saw it, he asked definitely what could be done to avert the dissolution of the Union and Civil War. Taking as his text the fact that Vermont had "nullified" the Fugitive Slave Law, he urged that as, in that case, Vermont could defy the Federal Government with impunity, so, if South Carolina or any other state determined to secede, she likewise could leave the Union without coercion. He then held up to his fellow-citizens of Massachusetts the not very convincing threat that the Middle and Southern States would reconstitute the Union, "excluding New England." The blame will rest, not with the South, but with the states north of the Mason and Dixon line. Here he said:

"Men of Massachusetts, we have pressed the patience of our fellow-citizens of fifteen states of the Union to the point where it can no longer hold. . . . It has to become either hearty peace or stern war. Our sister States, wronged as they think beyond all endurance, are now in arms, to defend their homes, their rights, their property, their honor, their lives; and be sure they will do it; and on our heads be the atonement, men of Massachusetts, if half the States of the Union be thus driven to declare their independence of the other half, and that for causes not less cogent than those which made us independent of Great Britain."

At some length Cushing dealt with Lincoln and his views on slavery, quoting extensively from the latter's public utterances. As a solution for the impending difficulties,

he made the naïve suggestion that Lincoln, in a mood of exalted patriotism, withdraw his name from the voting in the Electoral College, and allow that body to choose for President some such conservative as Edward Everett or John McLean. There is, said Cushing, no other way of preserving the Union unless Lincoln is willing to renounce the idea that slave labor states and free labor states cannot exist together in the Union, and to reject the counsel of agitators like Sumner, Andrew, and Phillips.

One last public address, the third of the series, he gave on December 10. In this, he assumes that the inauguration of Abraham Lincoln on the coming fourth of March will mean the formal dissolution of the Union. Before that event, however, certain remedies, — and only these, — may avert the break. First must come the repeal by individual states of all acts nullifying the Fugitive Slave Bill. Secondly, there must be manifest a willingness on the part of Republicans to recognize and respect the property rights of the South under the Constitution, and to allow her a due share of Federal territory. If the Republicans are not prepared to make these concessions, it is their duty to let South Carolina go, "as one parts from a dear friend, with deep regret of all, with no word of animosity or hostility." As a final word, he said:

> "Gentlemen, revolution is upon us, and we are on the high road to anarchy and civil war. Consequently, all public affairs are in confusion, and all private affairs the same. You demand of me what the remedy is. I reply, there is but one evil and one remedy. The evil is the agitation of slavery here in Massachusetts and the other Northern States, and the remedy is for the Republicans to leave off that agitation."

This was Caleb Cushing's last public address in defense of the South. The moment was near at hand when there

was no choice for him except to stand by his country. South Carolina, taking the lead in the movement for the establishment of a Southern confederacy, called a special state convention on December 17, at Columbia. Because of a prevailing epidemic of small-pox, the delegates adjourned at once to Charleston. Meanwhile the President, who had kept himself informed of the course of events, called Cushing to the capital, and sent him as his personal representative to Charleston, instructed to delay, if possible, the passage of an ordinance of secession. Cushing, who was certainly the Northerner best qualified for such a mission, arrived in that city early on the morning of December 20, bearing a note to Governor Pickens, in which Buchanan told the latter that information had come to the effect that South Carolina was considering withdrawal from the Union, adding that he deemed it his duty as President, while any hope of preventing such action remained, to use all methods in his power to postpone what could only be a catastrophe. Cushing was directed to hold communication with Governor Pickens, "for the purpose of changing or modifying the contemplated action of South Carolina." When, on the morning of his arrival, Cushing was admitted to an audience with the Governor, the latter said quite frankly, "I must tell you candidly that there is no hope for the Union." Further investigation showed Cushing that this part of his errand was hopeless. He was further empowered, in case of the rejection of his first offer, to say that, if Major Anderson were allowed to go unharmed, no hostilities would be launched against the secessionists until Buchanan's administration had closed. Even such an agreement, however, was rejected. At one-fifteen that afternoon, as Cushing sat in his hotel, he heard the loud shouts announcing that the Convention, meeting in St.

Andrew's Hall, had passed an ordinance dissolving the Union between South Carolina and the other states. In the evening came the formal signing of the document, in Institute Hall, the very assembly room where Cushing, eight months before, had presided over the Democratic Convention. But this time Caleb Cushing was absent. As the envoy of a foreign state, he had been sent a courteous invitation to be present at the ceremony, but he had indignantly refused to attend. Then and there his choice was made. He was with the South to the verge of rebellion, — but not beyond it. He lingered only long enough to hear the rejoicing which followed Governor Pickens' words, "I proclaim the State of South Carolina an independent commonwealth," and to see the illuminations which announced the birth of a new nation. He then returned to Washington, where, immediately after his arrival, the President called a cabinet meeting to hear his dramatic story.

Cushing's reception at Charleston did much to disillusion him regarding the situation in the South, and was an important factor in leading to the maintenance of his allegiance to the Federal Government. For the next few months he remained in the capital, where he was frequently called into consultation by the impotent Buchanan, whom he invariably advised to grant every honorable concession in order to preserve the Union. He wrote a friend, January 24, 1861:

"The Union is dissolved, irrecoverably. We have now to look after our *commerce* and our *peace*, both imperilled by the insane folly of the Republicans in attempting to conquer the South. Also, we, the Northern Republic, have to prepare ourselves for the rule of terror and corruption of our elected Rail-Splitter, *de facto* but not *de jure* President of the new Republic. Rely upon it, our coming four years are to be years of disorder and disaster."

One by one he watched the Southern States break away from the central government, and their representatives retire to their homes beyond the Potomac. He heard with sorrow the news that, on February 6, delegates from six seceding states had elected his friend and former associate, Jefferson Davis, as provisional president of the young Confederacy. He attended Lincoln's inauguration, watching with a grim and ironic smile as the man whom he had so recently assailed was safely seated in the Presidential chair. He listened with skepticism to the proceedings of the Peace Convention, over which another old friend, John Tyler, presided with his customary grace and amiability. And then came the firing on Fort Sumter, — and war!

On that memorable twelfth of April, 1861, Cushing was still in Washington, where he was advising Seward on some matters of legal technicality in which he was probably more thoroughly versed than any living American. On Monday, April 15, Lincoln called for 75,000 volunteers; two days later Cushing was on his way to Newburyport, passing on his way the Sixth Massachusetts Regiment, which had started for Washington. Shortly after his arrival in his native city, he was the principal speaker at a patriotic mass-meeting in the Newburyport City Hall, at which time he made public declaration of his adherence to the Union. His address on this occasion was not fully or accurately reported, but he said, in part, as follows:

"I cordially participate in the present patriotic demonstration. Long may this glorious flag wave above our heads, the banner of liberty and the symbol of our national honor! Our dear country now indeed demands the devotion of all people; for the dire calamity of civil war is upon us. I have labored hitherto for many years earnestly and in good faith, at least, first for

the conservation of the Union, and then to avert the evils of fratricidal war; of what I have said in that relation I have nothing to retract. But the day of discussion has passed, and the day of action has arrived. I have before me the question, which has occurred to public men in other countries, where political convulsions have divided friend from friend, and brother from brother, and sometimes arrayed them against one another in hostile camps and in deadly strife. What, in such a case as this, is the dictate of duty? Should we retire to take seclusion in a foreign country, or return in better times, to wear the honors of success, like Hyde? Or should we remain to confront the perils of our lot, like Falkland or Vane? The latter course, if not the safer one, is, at any rate, the more courageous one. I choose so to act. I am a citizen of the United States, owing allegiance to the Constitution, and bound by constitutional duty to support its government. And I shall do so. I am a son of Massachusetts, attached to her by ties of birth and affection, from which neither friend nor foe shall sever me. I will yield to no man in faithfulness to the Union, or in zeal for the maintenance of its laws and the constitutional authorities of the Union; and to that end I stand prepared, if occasion shall again call for it, to testify my sense of public duty by entering the field again at the command of the Commonwealth or of the Union."

Cushing did not stop with merely reaffirming his loyalty to the Union. On April 25, he sent the following letter to Governor John A. Andrew:

"I beg leave to tender myself to you in any capacity, however humble, in which it may be possible for me to contribute to the public zeal in the present critical emergency. I have no desire to survive the overthrow of the government of the United States. I am ready for any sacrifice to avert such a catastrophe, and I ask only to lay down my life in the service of the Commonwealth of the United States."

This he accompanied by a private note, in which he avowed to his former associate and rival an earnest solicitude to discharge his duty to his country. Andrew, how-

ever, with a smallness of mind utterly unworthy of the great "War Governor," did not see fit to accept the offer, and made this reply:

"Under the responsibilities of this hour, — remitted both as a man and a magistrate to the solemn judgment of conscience and honor, — I must remember only that great cause of constitutional liberty and of civilization itself referred to the dread arbitrament of arms. And I am bound to say that, although our personal relations have always been agreeable to myself, and notwithstanding your many great qualities fitting you for usefulness; yet your relation to public affairs, your frequently avowed opinions touching the ideas and sentiments of Massachusetts; your intimacy of social, political, and sympathetic intercourse with the leading secessionists of the Rebel States, maintained for years, and never (unless at this moment) discontinued, — forbid my finding you any place in the council or the camp. I am compelled sadly to declare that, were I to accept your offer, I should dishearten numerous good and loyal men, and tend to demoralize our military service. How gladly I would have made another reply to your note of the 25th inst., which I had the honor to receive yesterday, I need not declare, nor attempt to express the painful reluctance with which this is written."

Even Andrew's friendly biographer is compelled to admit that the Governor's curt rejection of Cushing's proffered services was both unjust and cruel. Lincoln's attitude was different. With his wise farsightedness, he saw the strategy of gaining the support of Northern Democrats. Within a few weeks, he actually determined to offer Cushing a commission as Brigadier General, and notified him accordingly; but Andrew, who was consulted, interposed, and persuaded the President that the appointment would arouse a dangerous antagonism in Massachusetts towards the administration. Lincoln's desire to conciliate and unite all loyal factions is in con-

spicuous contrast with Andrew's narrow and limited view of the struggle in which the nation was involved.

The refusal was made more noticeable by Andrew's quick acceptance of the services of Benjamin F. Butler, of Lowell. Both Cushing and Butler had attended the Democratic Conventions of 1860; both were Breckinridge Democrats, who had fought Lincoln and Douglas in the campaign just finished; if one was unworthy, surely the other was no less criminal. Andrew's biographer explains the choice by pointing out that Butler was a "less known quantity," and the Governor was, therefore, willing to "risk the chance of an error of judgment"; while Cushing's record was "too voluminously damning for him to receive place at Andrew's hands." The extent to which the Governor's decision was actuated by prejudice and a desire for revenge may be deduced from a letter sent by one of his intimate friends to another:

> "Our Govr. turns up a trump, full of decision and having no Presidential aspirations, he has acted with a single eye to the public good, and has brought in all parties around him. His snub of Caleb Cushing, who wanted to *ride in* on the storm, is said to be delicious. It was a sore disappointment to see Caleb come out on our side, — but the Govr. stopped his doing any other mischief."

The Governor's cold and formal refusal left Caleb Cushing sorrowful and humiliated. His punishment seemed heavier than he could bear. Already well beyond middle age, he had hoped, as his letters indicate, to close his career under the battle-flag of the Union, and thus to demonstrate his essential loyalty to his country. But his public utterances on the slavery question were now all to be quoted against him, and the North was in no mood for tolerance. For the moment he was savagely angry; and in this mood he wrote Butler, May 2:

"The Governor's letter is merely insulting. It is in the spirit of the atrocious acts proposed in New York and Boston, which imply the utter barbarism of the whole North. This letter relieves my conscience of the sense of public duty in virtue of allegiance. I am reflecting on passive probabilities, remaining in Massachusetts to meet the worst, an exile, or emigration to California or the Northwest. I have been pretty busy, assorting and filing papers for any emergency, and am now nearly ready."

In the end, however, Cushing's saner judgment prevented him from leaving his own section of the country. His righteous anger at the Governor gradually waned as he found that other people accepted him as a true and loyal citizen. Although blocked in his desire to enter miltary service, he discovered, within a few months, that there was work for him to do, and he was soon absorbed in routine duties. As the war went on, he grew in sympathy with the Republican Party, which, after all, had become the party of legality. Cushing's change of heart is shown by his increasing admiration for Lincoln [1] and by the fact that Charles Sumner, whom he had once despised as a "one idea'd abolitionist," was to become his most intimate friend.

[1] In 1860, according to Samuel Bowles, Cushing said that the Lincoln-Douglas debates showed Lincoln the superior of Douglas "in every vital element of power," and added, — "The world does not yet know how much of a man Lincoln really is."

CHAPTER FIFTEEN

CIVIL WAR

"He may not go; on him must lie
The doom, through peaceful years to live,
To have a sword he cannot ply,
A life he cannot give."

It seemed to Caleb Cushing in the summer of 1861 as if he had fallen indeed on evil days, and he felt that his race was almost run. The "inevitable conflict" against which he had so long been warning his countrymen had at last become a very present calamity. Each morning he raised with his own hand the flag which waved out from the tall pole on his lawn; but he was sad at heart. The brisk, vigorous, middle-aged gentleman who had presided over the Charleston Convention seemed to have become in a few months a worn and haggard old man. As the volunteers paraded down High Street in Newburyport, he stood with uncovered head watching them go by; but he could not help believing, in his despondency, that the Union, which had survived the threats of New England in 1814 and of South Carolina in 1833, was now actually in process of dissolution. The disaster which Webster and Clay had struggled successfully to avert had descended upon the nation within a decade of their passing. It is small wonder that Cushing, who had learned his love for the Union from the lips of Webster, should feel, to use his own words, like a ship blown from her moorings and left to float helplessly amid the waves and the storm.

He had to endure, moreover, the strain of unjust suspicion and even of open calumny. Old friends passed him by on the other side of the street; the greetings of his acquaintances were sometimes cold and distant. But this attitude of distrust did not last very long. His own conduct proved to be a sufficient refutation of those who doubted his allegiance. When one of his relatives seemed surprised because he had not openly resented Andrew's refusal to grant him a commission, he replied, — "I will not suffer personal differences between myself and Governor Andrew to stand in the way of my public duty to the Commonwealth and to the United States." Whenever he had a fitting opportunity, he exhorted men to be steadfast in the cause of the Union. An address of his at Salisbury in September, 1861, voices a patriotism hardly to be matched by any of his Republican contemporaries. In October he made another public statement, of a kind which ought to have been convincing:

"Much as I resisted the present administration as it was coming into power, I here avow that whatsoever has been said of me, or thought of me to the contrary, I have from the 4th of March, 1861, sunk all opposition. And let me tell you that but one thing remains to the United States, and that is to conquer victory.

In such a time as this to talk of political parties is not the thing. Party now is but the dust in the balance, the foam on the wave, in comparison with the Union and victory. When peace shall again revisit us, then, and not till then, will I criticise. When two hundred and fifty thousand of my fellow-citizens are in arms for the defense of the government and the country, I will not do it. We must have victory to ensure respect from the South, to dictate proper terms of peace, and to stand up in the face of the world, friendly or opposed, and have their profound respect."

Cushing had himself known, in the Mexican War, what it was to go to war accompanied by the covert and open attacks of citizens who remained behind, and he was determined that no such criticism, — so far as he was concerned, — should hamper the Northern forces. There was nothing about him of the "Copperhead." Once having made up his mind to support the Lincoln administration, he did all that he could to ensure its success. For Lincoln, whom he had, without knowing him, rather disliked, he came to have an unfeigned admiration, and he was soon his ardent advocate. In 1864, he made at Newburyport a public declaration of his allegiance to Lincoln, and he supported him in the campaign of that year against McClellan, the Democratic candidate. In fact, Caleb Cushing's record during the Civil War will bear the closest scrutiny. No one could have been more loyal, more self-sacrificing, more eager for victory than he.

It is true that, during those years, he no longer occupied the conspicuous place which had been his since the time of the Pierce administration. But the still pre-eminent position which he held among authorities in statute and international law made it seem natural that he should be called upon for advice on some of the intricate problems confronting the Lincoln cabinet. In mid-November the news reached New York of the capture of James M. Mason and John Slidell, Confederate emissaries to Great Britain, who, slipping out from Charleston under cover of a stormy night, had been transferred to the British mail-packet *Trent*. A few days later Captain Wilkes, commanding the American man-of-war *San Jacinto*, hailed the *Trent* in the Bahama Channel, took Mason and Slidell from their comfortable stateroom, and carried them off, under protest, to Bos-

ton Harbor, where they were imprisoned in Fort Warren. In one of those inexplicable waves of mob psychology which sometimes sweep over communities, Wilkes became the hero of the hour. The Secretary of War, Cameron, received the telegraphic despatch announcing the capture with the highest elation, and led off in a cheer, in which he was accompanied by Governor Andrew, of Massachusetts, who happened to be in his office; Wilkes was given a public dinner in Faneuil Hall, at which the Governor and the Chief Justice were present and spoke; and the national House of Representatives passed him a formal vote of thanks. When, in December, Great Britain sent a courteous but peremptory demand for the release of the commissioners, American resentment was quickly manifested. The British demand was made on the ground that a neutral vessel cannot be blocked in transporting diplomatic agents from the enemy to a neutral power. As Oppenheim points out (*International Law*, II, 519) Mason and Slidell were not, strictly speaking, "diplomatic agents," because, although they represented the Confederate states, those states were not recognized as such, but only as a belligerent power. But Mason and Slidell were unquestionably political agents of a "quasi-diplomatic" character, and Great Britain had some justification in international law for her demand.

The first reaction of Lincoln's cabinet, however, was undeniably one of satisfaction with Wilkes and his conduct. More careful consideration of the legal aspect of the matter, however, induced Seward, the Secretary of State, to move with caution. Impressed, as nearly everyone had been, with the authoritative character of Cushing's opinions as Attorney General, he requested him to prepare a memorandum stating his views on the various

international problems involved in the situation. A day or two later a group of leading New York merchants, acting through Mayor Fernando Wood, asked him to frame an argument along legal lines. Cushing's opinion, dated December 6, was later printed and sent broadcast throughout the East.

In accordance with his customary practice, Cushing had given the matter the most careful study. Writing in his library at Newburyport, where he was undisturbed by distractions, he had an opportunity to give the subject the scholarly research which it deserved. There can be no doubt that he approached the controversy with a judicial mind, and made every effort to reach fair conclusions. He expressly stated, at the beginning, that we had no cause to find fault with Great Britain for her attitude of neutrality or her recognition of the belligerent rights of the confederacy. She was well within her rights in so doing, and, regardless of our inner feeling as to what she might have done, we can do nothing but accept her decision. There is no precedent, Cushing says, in American history which covers the *Trent* case; but the British opinion, as elucidated by Lord Stowell, Phillimore, and Wildman, enunciates a doctrine which, if not justifying the stopping of enemy ambassadors in every case, at least does specifically justify the arrest *in itinere* of "unarrived enemy ambassadors." There are, of course, differing views, as Cushing admits; and it is necessary to judge the affair on the basis of fundamental principles. Briefly, the main point is the duty of all neutral governments to abstain from affording military aid to either recognized belligerent. In the case of the insurrection of the provinces of a country, these provinces must establish their independence by force of arms. To aid such provinces by transporting their ambassadors would be,

on the part of any neutral nation, an act of intervention in war; therefore the United States is within her rights in seizing such ambassadors on the high seas, even though they are in a ship of an acknowledged neutral. In other words, Great Britain, by assuming a formal position of neutrality, has placed herself in a position which justifies the action of Wilkes.

Cushing's last paragraph presents a summary of his conclusions:

"In my judgment, the act of Captain Wilkes was one which any and every self-respecting nation must and would have done, by its own sovereign right and power, regardless of consequences. It was an act which, it cannot be doubted, Great Britain would have done under the same circumstances. At the same time, it was an act amply justified by the principles and doctrines of international jurisprudence. We may well regret that occasion for the act has occurred, and the seizure needed to be done from on board a vessel, and still more a mail packet, of Great Britain, with whom, for all possible reasons, we desire to continue on the footing of cordial amity. But, Messrs. Mason and Slidell not having been embarked on board of the *Trent* by the British Government, that Government, as such, has not been offended by the seizure. The *Trent*, her officers acting on their own responsibility, could have no immunity from the ordinary laws of war, which affect the vessels of a great power equally as those of a small one; and Great Britain cannot fail, I think, to perceive that, — as no offense was intended to her in the matter, and as the rights of belligerency were exercised by Captain Wilkes in the most moderate form, without seizure of mails, without bringing in as a prize, without injury to private property, — her national pride and her national honor conspire to dictate the most amicable construction of this inevitable act of the sovereignty and belligerent right of the United States."

Cushing's exposition of the principles of international law involved in the controversy was indubitably sound,

and has since received the approval of the very best authority; but Lincoln and Seward had other considerations beyond mere legality to trouble them. There are times when it is discreet not to claim all that the law allows, and December, 1861, was clearly one of these periods. France, Austria, and Prussia had protested against the seizure of Mason and Slidell. When Caleb Cushing read his memorandum to Secretary Seward, the latter listened attentively, and evidently with full concurrence in the document presented; but, when it was over, he said, — "Mr. Cushing, you are doubtless quite right in your law; but I shall be obliged to send back Mason and Slidell, notwithstanding." Fortunately there was a loophole for the United States. It was contended that the seizure of Mason and Slidell, without also seizing the *Trent* and bringing it before a prize court, was illegal; for according to the Declaration of London, enemy persons and despatches may not be taken from a neutral vessel rendering unneutral service, unless the vessel herself is seized and brought to a port where a prize court was sitting. Here, then, we had a chance to escape with honor. On the following day Seward wrote Adams that Captain Wilkes had acted without authority, and on December 26 our Government disavowed the seizure and released Mason, Slidell, and their attendants. Thus ended an incident which, less tactfully handled, might have endangered our existence as a nation. That Seward was wise to yield, under the circumstances, is now admitted by nearly every one familiar with the facts. Adherence to Cushing's view might have satisfied our national pride, but it would have resulted in an immediate break with England, — and such a break, in 1861, as at any other time, would have been nothing short of a catastrophe.

By this time, Caleb Cushing was heart and soul in the

cause of the Northern armies. The battles of Bull Run and Ball's Bluff, in which the Union forces had suffered defeat, had the effect of revealing to him what would happen, if, by any stroke of fate, the Confederacy should be victorious. In his opinion on the *Trent* affair, he spoke briefly of his desire for the success of the Union:

"My voice is that of a political conscript for opinion's sake. It may avail nothing at this hour. But if I might presume, at this time, to address my country-men, I would exhort them to cease from caviling with foreign governments as to the name to be given to this portentous thing, which rises terrible before us, the awful fact of this great struggle in the heart of the United States, on the one hand to disrupt, and on the other hand to uphold, the integrity of the Union. . . . I would admonish them that, in such a crisis, it is the paramount duty of all men to rally around the President, as the necessary and only possible center of political order, and the young Commander-in-Chief, as the single existing center of military order."

During the remainder of the war, throughout its conflicts and crises, Cushing was the most loyal of Northerners. Much of his time was spent in Washington, where he was called in for consultation frequently by the heads of various departments. Welles, the Secretary of the Navy, after securing Lincoln's consent, entrusted Cushing with several highly important commissions. On January 17, 1862, he noted in his famous *Diary:*

"Had an interview with Caleb Cushing, who called at my house, on the subject of retaining him in the cases of the Navy agencies. Mr. Eames, who came with him, had opened the subject, and agreed as to the compensation on terms which I had previously stipulated."

Much of what he did during those troubled years will never be known, for Cushing was careful not to preserve any of his confidential correspondence for that period.

But he was able to accomplish, in a quiet, unobtrusive, and effective way, a great deal that was helpful to the government.[1] That he should protest against the enlistment of negro troops in the Northern army was to be expected; and he was momentarily grieved when Lincoln issued his Emancipation Proclamation. In the end, however, he was reconciled even to steps like these, which, in 1856, he would have regarded with horror; and when Gettysburg and Vicksburg made a Union victory certain, no one was more sincerely glad than Caleb Cushing.

In the autumn of 1861, Cushing was persuaded by some of his friends that he could assist in unifying sentiment in the North by accepting another election to the Massachusetts General Court. Once more, then, he appeared in that familiar Lower Chamber, and, when, as senior member, he called the session to order in January, 1862, he said:

"At other times the wordy warfare of party, the strifes of factions, might be tolerated and endured, if not encouraged and applauded. Such is not the present hour. Higher and greater thoughts occupy us now. I confidently believe that you, gentlemen, will prove yourselves equal to the emergency; that you will rise to the height of your duties; and that, taking the Constitution for your lodestar and your guide through the troubles

[1] Henry H. Dawes, who knew Cushing very well, once said, — "After he left the office of Attorney General, he occupied for nearly the remainder of his life, a position in respect to the administration of public affairs here in Washington at once anomalous and remarkable. I know of nothing like it in either our own or in foreign governments. He was confidential adviser to different administrations, and in the most critical times through which the government was passing during the period his services were invaluable. . . . Much like Baron Stockmar aiding the different ministries of the young Queen of Great Britain, he guided men in authority here through difficult crises, and out of embarrassing complications with wonderful skill." This statement is doubtless much exaggerated, and altogether too vague; but its essential truth is beyond dispute.

of the times, you will dedicate yourselves to the single object of contributing with heart and soul, to uphold, to reëstablish, and to perpetuate our sacred and beloved Union. This we resolve and determine to do, with the good help of God."

In the active work of the session, Cushing took small part, his duties in Washington leaving him little time to occupy his seat in the State House. He was there long enough, however, to bring about the annulment of that amendment to the State Constitution which provided that naturalized citizens could not vote or hold office until two years after they had become citizens. This utterly unjust act had been proposed in 1858 by the Know Nothing element in the state, and had been carried in 1859, Cushing opposing it with all his might during both legislative terms. Now, in the stress of war times, when Germans and Irish were fighting valiantly under the National flag, it was absurd indeed to insist on the two probationary years. In speaking on the subject, Cushing said:

"Men are now able, in the lurid light of civil war, to see the errors of many ways, on which the passionate impulses of party spirit induced them before the war to enter, greatly to the prejudice of the Union at large as well as of the Commonwealth. . . . It is not that events have made us sympathize with naturalized citizens, but that events have cured us of prejudices regarding them. We can see their merits in the light of their patriotic actions. No man ventures now to say that the naturalized citizen is not attached to the Constitution and the Union. The wonder is that any man ever doubted it."

Through Cushing's persistent appeals, the measure was annulled, and he achieved a well-deserved ovation from his friends among the Germans and Irish in Boston.

Cushing was chosen also to the General Court of 1863, but was able to be present only intermittently; indeed

he could leave the national capital for only a brief day or two at a time, and he was, therefore, no factor in the law-making of that session. In April, 1863, he found an opportunity to deliver a formal eulogy in the lower house on Major General Sumner, one of his comrades in the Mexican War; but, aside from this oration, no other remarks of his are recorded in the legislature of that year.

It happened, also, that he was much engrossed at this time in his own private practice of the law. He had never shown any desire to accumulate a fortune. His wants were few and simple, and he had always been able to supply them with only a moderate amount of labor. Now, however, with the prestige of his long public career behind him, he was beset by importunate clients, and, with no routine official duties to occupy his leisure hours, he soon found himself accepting retainers. His reputation, like that of Webster fifteen years before, was high, and it must be admitted that his fees were correspondingly large. He was the leading counsel in many important cases, the arguments for which were printed and have established notable precedents in law.

A few of the better-known cases in which he was engaged are, perhaps, worth mentioning because of the interest which they aroused not merely among lawyers but with laymen. In November, 1861, he presented before the United States Circuit Court the argument for the plaintiff in the complicated suit of Charles T. James *vs* the Atlantic Delaine Company, — a case which dated back to 1851, and had become a typical example of Jarndyce *vs* Jarndyce. James, a United States Senator from Rhode Island, was suing a large corporation for failure to make payment of $260,000 on a contract for building and equipping the Delaine Mill in the

outskirts of Providence. This case, which involved many obscure points of law, ran from 1859 until 1866, by which date James had been gathered to his fathers, and Cushing was representing his widow and surviving family. It was Cushing's contention throughout his argument that he was presenting "a plain case in equity, arising out of the fraudulent conduct of some of the principal defendants"; and indeed he did thread his way with extraordinary skill through the maze of legal circumlocution with which the real issues had been surrounded.

Another interesting case in which Cushing was concerned was that of Charles Francis Adams *vs* Wm. C. Johnson, *et al*, in which he was attorney for the defendant and his old college classmate, Samuel Sewall, counsel for the plaintiff. Mary Louisa Adams, granddaughter of John Quincy Adams, had received from the latter, at his death, a bequest of $20,000 in cash, besides certain real estate. In 1855, she married William C. Johnson, and six years later died. Her husband was suing for his marital rights in her estate.

In December, 1865, and again in February, 1866, he argued before the Supreme Court of the United States the notorious case of John McGuire *vs* the Commonwealth of Massachusetts. McGuire had been accused of keeping a nuisance, — a tenement for the storage and sale of intoxicating liquors, — and had been convicted, sentenced, and fined severely. It was Cushing's contention that the Massachusetts statute under which McGuire had been convicted was unconstitutional, being in defiance of the sanctity of contracts established by the Constitution of the United States. In discussing the question at issue, Cushing said:

"As value at stake, it involves ultimately as great value as any case ever presented to this Court. As constitutional law,

it presents considerations of as wide a scope and deep import as any case ever passed upon by this Court."

In concluding his argument, Cushing submitted reasons to show that the prohibition of intoxicating liquors would be injudicious. He admitted all the evils of intemperance, but added that it would be both impossible and inadvisable to undertake the suppression of traffic in alcoholic stimulants.

In another long-standing suit, that of De Haro's heirs against the United States, Cushing was counsel for the appellees, — seven surviving children of Francisco de Haro. The suit involved a claim for a large tract of land in the city of San Francisco, alleged to have been granted to their deceased brothers, Francisco and Ramon de Haro, in 1844, and to have been passed by inheritance to their father, and from him to themselves. Many famous lawyers were drawn into the affair, including, besides Cushing, William M. Evarts, Montgomery Blair, William M. Stuart, and J. M. Carlisle; the legal talent represented, in fact, two Senators of the United States, the Attorney General, and three ex-cabinet ministers. In his argument, which was continued at intervals through 1866 and 1867, Cushing displayed a familiarity with Spanish which astonished equally his professional opponents and the Court. In discussing the exact interpretation of certain Spanish legal terminology, he had the judges completely at his mercy, and the resulting confusion amused many of those who were listening to the speeches.

Cushing argued, in 1863, the once well-known California Land Case, in which he represented the interests of Ellen E. White *vs* the United States. He was counsel in 1864 for the Commonwealth of Massachusetts in the famous Federal Street Church Case, in which several im-

portant issues were involved. In the George Will Case, in 1864, he argued before the Supreme Court of New Hampshire for the validity of a will executed on Sunday, and won his point. In 1866, he appeared in the United States Court of Claims, representing the Petitioner in the Dover Five Cent Savings Bank *vs* the United States, the bank claiming payment on two drafts of $10,000 each, accepted by John B. Floyd, Secretary of War under Buchanan, in 1860. Floyd, with what has been called "reckless imprudence," had accepted drafts drawn by Russell, Majors, & Waddell, a firm of promoters who had large contracts with the War Department for transporting army provisions. As early as February, 1861, Cushing had given his opinion, for Pierce and Gilmore, of Boston, that the United States was liable in full for these acceptances, of which no less than $7,000,000 had been issued. An indictment of Floyd was blocked by a technicality, but the government was held responsible for his unwise acts.

In 1867, Cushing was drawn into the long-standing case of R. W. Meade before the Court of Claims. Meade, an American merchant residing at Cadiz, Spain, in 1818, had petitioned the United States for redress from injuries which he had suffered from the Spanish Government, and special commissioners, while calling for more evidence from Meade, had delivered a tentative opinion. The case had dragged on thus for forty years, until it had become a standing joke among lawyers. Again Cushing's acquaintance with the whole subject of Spanish claims gave him the knowledge requisite for pushing the suit to a successful termination.

Cushing represented the United States Government, in 1868, in the so-called "Postage Stamp Case," to recover the value of $12,000 in postage stamps, captured

by the rebel cruiser *Florida*, which, after passing through several hands, at last reached Toronto, Canada, where, at the close of the Civil War, they were to be sold. Our Government obtained an injunction against their sale, and later argued, through Cushing, that the captors of the stamps, being rebels, could not roam the high seas, and, having captured the property of their legal sovereign, take it into any admiralty court as a prize of war, but that their act was mere piracy. The court sustained our Government, and decided that the title of that class of property is still vested in the United States.

Probably the most famous case in which Caleb Cushing was engaged at this period was the suit of Mrs. Gaines against the City of New Orleans. He was employed by the plaintiff, or claimant, who asserted a right to large real estate properties in that city.[1] In 1861, the matter came before the Supreme Court for the sixth time. A Washington correspondent gives a picturesque description of Caleb Cushing as he appeared in action:

"Caleb Cushing was addressing the court in one of his most able judicial efforts. Mrs. Gaines had employed him to do the last and greatest work in this trial, which has so long occupied public attention, and there seems to be little doubt on all hands

[1] Myra Clark Gaines was the daughter of a French beauty named Zulime Carrière, who, after having been lured into an illegal marriage by a bigamist and swindler named De Grange, married Daniel Clark, an immensely wealthy Southerner. Myra was born to this couple in 1806, but Clark, in the meantime, had deserted Zulime, who had thus no proofs of her marriage and finally married a Dr. Gardette. Clark eventually repented, sought out his daughter Myra, and placed her under the care of a friend. Clark died in 1813. Myra married first a Mr. Whitney and then General Gaines, at whose instigation she brought suit in various courts for her proper share of the Clark fortune, which was immense. In the progress of the suit through the courts, her fortune disappeared, but she eventually recovered her rights when she was fifty-five years old. The case aroused the keenest interest throughout the country.

that he has won his suit. He is a man of good appearance, large head, and penetrating eyes. In his summing up of the case I have rarely heard anything that surpassed it. His voice was not loud, but deep and firm, and every word carried a singular power. In gesture he was very sparing, using his left hand mostly, and closed, with the exception of the third finger, which was thrust straight out. . . . At the close of Mr. Cushing's remarks, he closed his books as coolly as if in his own library, stepped across the room to the right, and shook hands with some ladies who had been listening."

In March the Supreme Court gave its decision in favor of Mrs. Gaines, declaring that, as the only legitimate child of Daniel Clark, she was entitled to all the property of which he stood possessed at the time of his death. The record of this stupendous case covered more than three thousand pages, and it was under consideration for more than half a century. Associate Justice Wayne, in announcing the Opinion of the Court, said:

"When hereafter some distinguished American lawyer shall retire from practice to write the history of his country's jurisprudence, this case will be registered by him as the most remarkable in the annals of its courts."

In the interesting case of Goodyear *vs* the Providence Rubber Company, Cushing acted as one of the counsel for the defendants, and protested with much earnestness against the hard rubber patents controlled by Goodyear, which gave the latter a practical monopoly. This suit was an outgrowth of the famous earlier dispute, when Daniel Webster, attorney for Goodyear, secured a favorable verdict, giving his clients control over all products of vulcanized rubber. In 1868, Cushing was one of the counsel for Benjamin F. Butler in the latter's motion to vacate service on the ground that, as a member of the House of Representatives, he was suffering from a breach

of his Constitutional rights, the Constitution having guaranteed Congressmen freedom from arrest while going and coming from their duties. In September of that year he framed an opinion favoring the right of the National Life Insurance Company to establish agencies in the state of New York, this company being incorporated in the District of Columbia. A few months later, in the case of the Veazie Bank *vs* Jeremiah Fenno, Collector of Internal Revenue, he argued before the Supreme Court of the United States that a tax levied on banks by an act of Congress, approved July 13, 1866, was unconstitutional.

In 1865, Cushing formed a partnership in Washington with Eben Francis Stone, but the latter, finding the labor distasteful, returned, after a year, to Newburyport, leaving Cushing to carry on the pending cases. As a matter of fact, Cushing's best work was done without the assistance of colleagues, and he really needed no partners. He was called in 1867 "the representative public lawyer of the country," and he accepted few retainers except where matters of high consequence were at stake, involving fundamental principles of law; indeed most of his arguments were made, as we have seen, before the Supreme Court. After the war there were many complicated questions of international law to be adjusted, and in conducting these Cushing had no rival in the country at that period. He represented the Treasury Department in the famous case of the Steamer *Grey Jacket* and cargo *vs* the United States, B. F. Butler being the attorney for the plaintiff. In such suits as this, his thorough preparation, his clarity of statement, and his eloquence of appeal combined to rank him with the very best lawyers of any time. His extraordinary industry, even when he was nearing three-score and ten, and his equally remark-

able knowledge and memory, were factors which opposing counsel knew very well how high to value.

When we have even this slight glimpse of the extent and importance of Cushing's private law practice, we cannot help marvelling at the ease with which he accepted such public duties as fell to his lot. Not the least significant was the settlement of the claims of the Hudson's Bay and Puget Sound Agricultural Companies against the United States for the value of property taken by the United States south of the 49th parallel, in accordance with the terms of the Oregon Treaty of 1846. This treaty had been supported by an agreement of July 1, 1863, arranging a method of settling the various claims which had accumulated. Two commissioners were appointed: John Rose, for Great Britain, and Alexander S. Johnson, for the United States. The Umpire was Benjamin R. Curtis. In April, 1865, the two companies involved submitted memorials presenting their claims upon our government. Cushing's answering argument, as counsel for the United States, was filed in 1868, and proved to be a convincing exposure of the exaggerated estimates placed by the companies involved upon their alleged losses. The award, pronounced September 10, 1869, gave the Hudson's Bay Company $450,000 and the Puget's Sound Agricultural Company $200,000, both sums below the amount originally demanded. Cushing's statement of the American Case was much admired for its lucidity and force.

It was still the fashion to suggest Cushing's name whenever any important mission was contemplated. It was stated authoritatively in October, 1865, that he would be sent to England as the special agent of Secretary Seward, entrusted with the duty of stating the Secretary's personal views regarding the *Alabama* depredations. On

November 3, however, the Philadelphia *Press* published an official denial of the report, saying that Cushing was in Washington as usual, "quietly attending to his professional engagements." The *Press* added:

> "No man has been more sincere in his devotion to his country since the Rebellion than General Cushing. He has not proffered his counsel, or obtruded his personal aspirations, and yet he has been repeatedly consulted by the government on the important subjects that have repeatedly demanded its consideration."

For one task which he undertook during this period, Caleb Cushing was probably better equipped than any living man. In 1866, at the instigation of Senator Charles Sumner, Congress passed a bill providing for the revision and consolidation of the statute laws of the United States. As soon as the measure was approved, President Johnson appointed Cushing as one of the commissioners. The only specific requirement was that the commissioners should be "learned in the law," — and this requirement Caleb Cushing was certainly able to meet. The actual revision covered many years, and, before the work was done, Cushing was obliged to resign. He did, however, devise the plan by which the statutes were to be arranged under seventy-six separate titles, beginning with *General Provisions*, and closing with *Guano Islands* and *Smithsonian Institution*. The entire program for the commissioners was, in fact, laid down by Cushing, and his methods were followed throughout the routine labor of the clerks who were employed at the stupendous task.

Meanwhile momentous events had been going on. Lincoln's second election, Sherman's march to the sea, Lee's surrender, Lincoln's assassination; all these had come one after another, while Caleb Cushing looked on in bewilderment. Lincoln's death filled Cushing with

sorrow, for he had learned to know the wisdom, the patience, and the sympathy which animated the President's every act. By an interesting development, Cushing had come to be intimately associated with many Republican leaders. With Grant, he formed a friendship which was never broken; his old enemy, Charles Sumner, now became his most intimate companion. It became his custom, indeed, to dine once a week with the Massachusetts Senator at the latter's home, where matters of state were discussed and Sumner had the benefit of the elder stateman's counsel.

In 1866, Cushing bought an old estate called "The Glebe," near Falls Church, Virginia, about seven miles from the capital, across the Potomac. It had been, in colonial times, the Episcopal parish parsonage, but had fallen into decay, and Cushing took a kind of gloomy pleasure in trying to restore it and improve its exhausted fields. At the same time he transferred his citizenship to Virginia, prompted to this act, perhaps, by the expressed wish of some Virginia conservatives to name him for the United States Senate. A more powerful motive, however, was his desire to avoid the criticism which still pursued him in Massachusetts. Not even his services to the Lincoln Administration could persuade such men as Lowell that Caleb Cushing was a loyal citizen, and their influence was very strong in determining the course of public opinion. In Washington and in Virginia, on the other hand, he could be sure of being left alone.

When hostilities had ceased and the spirits of the Northerners began to revive, Cushing was still a personage. In June, 1868, he delivered an address at the Commencement Exercises of the Columbia Law College in Washington, in which he traced the evolution of legal practice from Roman times to his own day, and urged the

young graduates to maintain the dignity of their chosen profession. Some weeks later Cushing went to Boston to attend the dinner given at the St. James Hotel for the Chinese Embassy, headed by Anson Burlingame, which was then visiting America for the purpose of ratifying the supplementary Chinese Treaty. The "grand banquet," which followed after the public reception in Faneuil Hall, was an elaborate affair, intended to impress the oriental envoys, who, however, maintained a perfect calm and took very kindly to champagne and Havana cigars. The Mayor, Nathaniel B. Shurtleff, presided, and among the speakers were Burlingame, Governor Bullock, Senator Sumner, Nathaniel P. Banks, Ralph Waldo Emerson, and Oliver Wendell Holmes, who read an original poem, — a striking array of Massachusetts talent, difficult to equal in any period. Cushing had been asked to respond to the toast "Diplomacy," and, when he rose, the Chairman proposed three cheers for the "only Minister to China who bears a Chinese name, — Coo-shing." Cushing, in his address, referred most happily to his own reception in China, and to the high character of the Chinese representatives. One passage indicated a kind of sadness which the war had brought upon him:

> "Now I have become disillusioned and disabused of many things; and there is little left for me which seems entitled to respect. Hardly more than two things have ceased to be subjects of illusion, — woman's virtue and man's honor. The changes of time have left little else upon which the presumptions of the press, or the bar, and of the Senate have not placed their profaning hands."

During the progress of the addresses nearly every speaker mentioned with praise Cushing's first mission and the success which he had achieved. His was the best speech

of the evening, and even Emerson and Sumner were eclipsed.

It was Senator Sumner who was responsible for President Johnson's appointment of Caleb Cushing as Special Minister to Colombia, instructed to negotiate a treaty regarding a ship canal across the isthmus between the Atlantic and the Pacific. Cushing with his Secretary, Luis de Arze, left late in December, 1868, when the Northern winter was just coming on, and arrived in Bogota, the capital of Colombia, on January 3, 1869, where he was warmly welcomed. A treaty was shortly prepared, giving the United States the right to construct and own a canal across the Isthmus of Darien, the excavation to be completed within fifteen years after the date of the treaty, and the canal to be open to all nations in times of peace, although closed to belligerents during a period of war. Late in January, Cushing, his task completed, left Bogota, stopped two days at Carthagena, and reached Panama on February 4. Here he was entertained at dinner by the United States Consul at Aspinwall, and called upon the President of Panama, by whom he was received with full military honors. He reached Washington late in February, 1869; and on April 12, 1869, the treaty was submitted to the Senate by Sumner, Chairman of the Committee of Foreign Relations, who gave a brief survey of the negotiations and praised warmly the skilful manner in which the affair had been conducted by that veteran diplomatist, Caleb Cushing.

Meanwhile the Colombian Congress was convened on February 2, and found in the proposed treaty an all-absorbing topic for debate. The opposition, at first not inconsiderable, maintained that the United States had no intention of building a canal at that time, but was simply trying to secure concessions which would block other

nations. The matter of approval dragged on. The final date for ratification was September 1, 1870; and it was not until March 1, 1870, after many months of debate, that the treaty passed even its first reading before the Colombian Legislature. Meanwhile, however, Colombia had granted the United States permission to conduct an investigation of the various possible routes, with the idea of selecting the most feasible one. Grant, who had then become President, and who had always favored the canal, sent Admiral Davis in the *Nipsic* to survey the isthmus. The problem of the best available route proved to be then, as it has been shown to be since, a source of controversy, and it was many years before the canal was to be completed. The United States, although the treaty was ratified, never took advantage of the possibilities opened up by the treaty which Cushing arranged.

At this period, also, Cushing was much occupied with Mexican affairs. By a Convention between the United States and Mexico, signed July 4, 1868, all claims of the citizens of one country against the other since the Treaty of Guadaloupe Hidalgo (February 2, 1848) were to be referred to a commission, who should decide on all questions under dispute. The claims in question amounted to more than one hundred million dollars. The commission was finally formed with William Henry Wadsworth, of Kentucky, representing the United States, Senor Gomez Palacio, of Mexico City, representing Mexico, and Professor Charles Lieber as Umpire. J. Hubley Ashton was appointed as Agent and Counsel of the United States, and Caleb Cushing accepted a similar position from the Mexican Government. From July, 1869, for many months Cushing was occupied in the laborious task of presenting Mexican claims before this commission. The commission was very much involved in

"red tape" and action was exceedingly slow; indeed twenty copies of each claim were required to be printed in both languages, this labor involving a heavy expenditure in employing translators and copyists. So dilatory was this court that it was subjected to much criticism, and Cushing did not hesitate to express himself very freely regarding its inefficiency. The truth was that the commission, unable to resist the conclusion that the Mexican claims were more just than those of the United States, was delaying in the hope that events might take a new turn. Cushing had made his case with great skill for his clients. It is needless to say that his knowledge of Spanish was of inestimable value to him and to the commissioners throughout the sittings of the court.

While Caleb Cushing was thus occupied with many affairs of business and law, General Ulysses S. Grant was inaugurated as President, on March 4, 1869. Cushing's conversion to Republicanism was indicated by his refusal to support Horatio Seymour, the Democratic candidate for the Presidency in 1868, and by his contributing to the Republican campaign fund. Cushing's decision was based on his belief that only through the influence of a strong man such as he believed Grant to be could the affairs of the South be readjusted. The war had broken up the old alignments of parties. Cushing's former Democratic friends were now either dead or disfranchised because of their connection with the rebellion. Furthermore Cushing had outlived most of his strong party proclivities, and cared now for nothing except to be useful to the administration.

With the Grant government Cushing was at once on intimate personal and official terms, such as he had not known since the days of President Franklin Pierce. Grant, who was inclined to depend very largely on ad-

visers, came to rely on Cushing's counsel in mooted questions, and trusted him implicitly. In November, 1870, for instance, there seemed likely to be dangerous election riots in New York City, with a possible bloody conflict between the state and national troops. Grant at once called in Cushing, gave him a temporary appointment as assistant District Attorney, and sent him to New York with instructions to straighten out the tangle. It took the latter only a day or two to pacify both parties to the quarrel. Taking as his text Grant's words "Let us have Peace!" Cushing applied a soothing balm to sores and brought order out of discord. It was an excellent illustration of the importance of tact in times of emergency. In commenting on his activities at this time, a contemporary newspaper correspondent wrote:

"Cushing is a most wonderful man! He is as brisk on his feet as any much younger man in the national capital, but occasionally, when in not too great a hurry, enjoys a ride on the street cars. He is a good conversationalist, talks upon every subject in almost every modern language; is pleasant, genial, and witty, cheerful in countenance and smooth-shaven face. He wears clothes that never betray the gloss of newness or of being worn, affects striped gingham shirt-collars of the stand-up cut, and a hat of the stove-pipe in shape, but never too silken and shiny in appearance. After the labors of the day at the different courts and departments, — and they are sufficient to wear out the brains and running-gear of a half-dozen ordinary men, — the cosmopolitan counsellor retires to his rooms at the Mexican Commission and solaces himself with a glass of brandy and a cigar."

In May, 1871, Grant appointed him as Advocate on the part of the United States to appear before a Board of Arbitrators charged with the settlement of the claims of citizens of the United States against the Government of Spain for wrongs and injuries committed against

American citizens and property during the recent insurrection on the island of Cuba. Here once more his unequalled experience with Spanish affairs enabled him to perform a valuable service for his country. It is interesting to note that during the Franco-Prussian War he was, unlike most Americans, strongly opposed to Germany and exceedingly distrustful of Bismarck. Indeed he gave out one interview in July, 1870, which had almost an official character, and which seemed to indicate that the administration had a distinct leaning towards France.

He had now reached the age of three-score and ten, a period when he might well have thought of retiring from the stir and storm of public life. Like Ulysses, however, Caleb Cushing could not let his powers rust in idleness; he might have said, in the words of Tennyson's poem:

> "How dull it is to pause, to make an end,
> To rust unburnish'd, not to shine in use!
> As tho' to breathe were life."

There was still a task for him to perform; and while there was such an opportunity, Caleb Cushing was not likely to go into seclusion, even among his favorite books.

CHAPTER SIXTEEN

AN ADVENTURE IN DIPLOMACY, — THE GENEVA ARBITRATION

"For age is opportunity no less
Than youth itself, though in another dress."

However ardent Caleb Cushing, in his salad days, may have been for personal advancement, he had, by 1870, passed the stage where the craving for position was with him in any sense a controlling motive. Aware of the influence which he exerted behind the scenes and sincerely desirous of working only for the national good, he was content to remain a private citizen. Although he occupied no office, he was called to the White House in conference on many problems of executive policy, and his opinion, if not always followed implicitly, was never ignored. The secret history of the Grant administration, — not all as yet disclosed, — will show that Caleb Cushing was recognized as Fish's adviser, and that he was a factor in most of the decisions of the Department of State. The supreme triumph of the administration was, of course, the settlement of the controversy over the so-called "Alabama claims"; and during the prolonged negotiations arising out of this international quarrel, Cushing's counsel was sought, at various times, by men so different as Seward, Johnson, Sumner, Fish, and Grant. It was his good fortune, moreover, to have a large share in bringing the matter to a safe and dignified consummation for the United States.

Caleb Cushing as American Counsel at Geneva in 1872

For a full understanding of the part played by Caleb Cushing in the *Alabama* affair, we must revert to the days immediately following the fall of Fort Sumter. With war at last a definite reality, Lincoln and his cabinet awaited, with some hope but more apprehension, the action of foreign governments; and it was a distinct disappointment when, on May 13, 1861, only a few hours after the arrival in England of Charles Francis Adams, our newly-appointed ambassador, the Liberal Cabinet, under Lord Palmerston (with Lord John Russell in the Foreign Office and Mr. Gladstone as Chancellor of the Exchequer), issued a Queen's Proclamation of Neutrality, as between the Northern and Southern States. This recognition of Confederate belligerency, although described by Secretary Seward as "premature and injudicious," was entirely justifiable in international law and was probably not actuated by any unfriendly intent towards the North. Minister Adams, despite his disappointment, made no official protest beyond his remark to Russell "that the action taken seemed . . . a little more rapid than was absolutely called for by the occasion." Other European nations followed the example of Great Britain, and the belligerency of the South was thus fully established.

Adams was soon left without any illusions as to the temper of the London society into which he was introduced. Careful observers agreed that the sentiment of the British upper and middle classes was almost without exception sympathetic to the South. A Confederate loan of three million pounds was over-subscribed to the amount of twelve million pounds, and Southern bonds were quoted for some months higher than those of the Northern States. Lord John Russell, having made up his mind that a separation between the two sections was inevitable,

had actually resolved to accept the Confederacy as a new nation; and Palmerston and Gladstone, with some minor reservations, held views which coincided with his. In Parliament there were not wanting speakers to advocate openly the cause of Jefferson Davis and his government. Only a few of the more progressive thinkers, like Bright, Forster, and Cobden, ventured to express openly their confidence in Lincoln and the North.

It was not, of course, Adams's function to complain of British sympathy for the South; but when that sympathy developed into active support, it was another matter. The Confederate Naval Agent in England, Captain James D. Bulloch, had little difficulty, even after the Proclamation of Neutrality, in making a contract at Liverpool for a formidable cruiser. This vessel, the *Oreto*, — later known as the *Florida*, — was built in Liverpool and allowed to sail under British registry, in March, 1862. At Nassau, a Confederate officer appeared to take charge of her. Soon a second ship entered the harbor, loaded with equipment, and, although detained at the instance of the United States Consul, was finally released by the British local courts. The two vessels then met at a lonely desert island, and the armament and supplies were transferred to the *Florida*, which then steamed away on her career of destruction. Subsequently she captured and destroyed at least forty Northern merchantmen before she was rammed by the United States *Wachusett* in the harbor of Bahia. It was one of the *Florida's* tenders that sank the United States revenue cutter *Caleb Cushing*, which had been named for Pierce's Attorney General. During her voyages, the *Florida* was on several occasions freely admitted into the ports of British colonies, and allowed to purchase food and munitions.

In the spring of 1862, another cruiser, first called "No. 290," and later the *Enrica,* was launched at Liverpool, with very little attempt at concealment. Regardless of a specific warning from Adams, the British Government remained passive, and, on July 29, — through what Lord John Russell later confessed was his own negligence, — the boat left the harbor, ostensibly on a trial trip. She never returned. Soon, rechristened as the *Alabama,* she secured her armament and officers at the Azores, and, under the command of Captain Raphael Semmes, flung out the stars and bars of the Confederacy. Within a month or two reports began to arrive of the havoc which followed in her wake. Vessel after vessel engaged in peaceful commerce was overhauled and burned, and American trade suffered frightful losses.[1] Protests were filed in Washington by the unhappy victims, and the Department of State, in turn, presented its complaints to the Queen's Government; but in March, 1863, Russell replied with some asperity that the cabinet must "entirely disclaim all responsibility for any acts of the

[1] In the depredations of the *Alabama* Caleb Cushing had more than an impersonal interest. He was part owner, with his half-brothers John and William, in several vessels, among them being the *Sonora,* a fine brig of 700 tons, which was under the command of Captain Lawrence Brown, of Newburyport. In 1862 this ship, ignoring possible danger, went on a long trading voyage to Australia, China, and India. Eight days out from Singapore *en route* to Akyab, in the Malacca Straits, the *Sonora* was hailed on the morning after Christmas by a mysterious craft, which proved to be the *Alabama.* Captain Semmes wasted no time in apologies; after removing some of the valuables from the *Sonora,* he burned it to the water's edge, and set the officers adrift in an open boat, a hundred miles from land. Fortunately they were soon picked up and set ashore at Penang, from which port Captain Brown made his way by short journeys back to his home to tell his dramatic story in 1864, and it did not soften his feelings towards the nation which had permitted the *Alabama* to sail away on its piratical mission.

Alabama." The devastating career of the cruiser was not terminated until June, 1864, when she was sunk in a naval duel in the English Channel, by a United States battleship, the *Kearsarge*.

Not many months elapsed before considerations of a practical kind exerted an influence which mere moral suasion was too weak to accomplish. In the summer of 1862, two ponderous ironclads, — the "294" and the "295," — were started at Liverpool, in spite of repeated protests from Seward. Adams warned Russell that their construction for the Confederate States was virtually equivalent to Great Britain's active participation in the Civil War. The Foreign Minister, however, still declined to interfere. Then came the startling news of Gettysburg and Vicksburg, — decisive Northern victories which made it certain that the South would eventually be defeated, — and far-sighted statesmen were driven to reflect regarding the consequences to Great Britain if, when she herself were later engaged in war, the United States, following strictly the precedent set by England, should allow cruisers for England's enemies to be built in American harbors and to sail from American ports. Sound judgment dictated a change of policy. An order was issued at the last moment detaining the ironclads, and they were purchased for the British navy. After that date no Confederate vessels left the British isles. Still another British ship, the *Sea King*, was, however, bought by the Confederate Government in 1864, and, as the *Shenandoah*, continued the destruction among American merchantmen which the *Alabama* had been obliged to cease a few weeks earlier.

While the Civil War was still going on, the American Government made repeated protests to Russell and the British cabinet. Seward asserted that our commerce on

the high seas was perishing because "of ships of war that are sent out for that purpose from British coasts." Adams condemned Great Britain for recognizing as a belligerent a power without a single vessel of its own upon the ocean. But Russell pertinaciously refused to admit that his country had been in any way remiss in preserving the spirit and letter of its neutrality.

After the surrender of Lee, the feeling developed in Washington that we had a definite cause for grievance against the British. For some months a diplomatic correspondence was carried on between Earl Russell and Adams, but there seemed to be a complete block when the former announced that his government must refuse "either to make reparation and compensation for the captures made by the *Alabama*, or to refer the question to any foreign state." After the death of Palmerston in 1865, Seward hoped that there might be a change in British policy; and it was currently reported in November that Caleb Cushing was to be sent to London as a Special Agent. The London *Times* for November 11 said in a leader:

"Amid all the excitement which attends the reconstruction of the United States and the settlement of some of the most difficult questions which have ever pressed upon a people, the Americans still find leisure to talk and to write angrily about the ravages of the *Alabama* and their consequent claims upon the British Government. There is no use concealing that, as far as the utterances of the press and the tone of their private conversation indicate their temper, there is as much determination on their part to uphold these claims as there is on our part to reject them. . . . We have no doubt that our own government will be glad to consider any subject which Mr. Cushing may lay before it, though we cannot see what scope there is for discussion with regard to the principal matters in dispute. The best remover of these difficulties is time, and we trust that the Americans will be brought by time and reflection to resume their

good will for both the great European powers, between which and them there is now a temporary coolness."

Unfortunately these negotiations, — if such they may be called, — were temporarily closed in December by Lord Clarendon (Russell's successor in the Foreign Office), who declared, not without irritation:

"The British government have steadily and honestly discharged all the duties incumbent upon them as a neutral power, and have never deviated from the obligations imposed upon them by international law."

The direct consequence of this unqualified assertion was the passage by Congress of a bill repealing all those provisions in our neutrality laws which forbade the fitting out of ships of war for belligerents. This was a warning which could not be mistaken, and its purport did not escape the British press.

In June, 1866, Russell and his cabinet, obliged to resign, were succeeded by a Conservative ministry, under Lord Derby. It was shortly apparent that the new government was prepared to take a different tone. "Expediency," says one of George Meredith's characters, "is man's wisdom; doing right is God's." British public sentiment, which had listened unmoved to the American request for fair and just treatment, was now profoundly touched by the promptings of the instinct for self-preservation. The policy pursued by Russell in the case of the *Alabama* was, as Downing Street was now beginning to comprehend, one which would sooner or later react disastrously against Britain's far-flung empire. There was increasing danger that England might be drawn into the continental quarrels of France, Prussia, Austria, and Italy, in which event the United States would be entirely justified in building cruisers for the destruction of the

extensive British merchant marine. One can readily imagine how Mr. Lloyd George would have felt if America, during the first years of the World War, had, in strict conformity with the precedent established by the *Alabama*, allowed vessels destined for the German fleet to be launched at Boston or at New Orleans. Fortunately there were men in the new British cabinet who perceived the complications which might arise, and who, actuated by an enlightened selfishness, took pains to see that the frown of John Bull was less forbidding. Granville, the new Foreign Minister, did not hesitate to admit frankly in the House of Lords that he looked with real solicitude on England's relations with the United States.

The conciliatory tone of despatches at this period was auspicious, but it could not disguise the pertinacity with which the two countries held to their respective points of view. Adams, supported by Seward, had based his protests largely against the British Neutrality Proclamation of May 13, 1861, contending that it was from this recognition of Confederate belligerency that most of the trouble had arisen. The British, on the other hand, persisted in maintaining that, whatever responsibility was theirs for the escape of Confederate privateers from English ports, they had been entirely justified in the original proclamation. This difference of opinion seemed, for a time, an insuperable obstacle to any agreement.

In the autumn of 1868, Mr. Reverdy Johnson, a well-meaning but indiscreet Baltimore lawyer who had succeeded Adams in London, again took up with Clarendon the subject of the *Alabama* claims, and, with Seward's cabled instructions to encourage him, concluded early in the following January what was known as the Johnson-Clarendon Convention. This treaty provided for the settlement by commissioners of all claims of one country

against the other since the year 1853. Two important facts, however, were at once apparent: it made no comment whatever on British recognition of Confederate belligerency; and it allowed only "individual" claims for injuries. Seward, eager to settle the matter before he left the Department of State, had insisted on haste, and he submitted the treaty to the Senate as soon as the cabled text reached Washington. But the Senate was not ready to act until Grant had been inaugurated and Hamilton Fish had taken Seward's place in the cabinet.

By that time it was perfectly clear that Seward had completely mistaken the temper of the American people, who were in no mood to make any concessions to England. Contemporary American feeling was well expressed in Lowell's *Biglow Papers:*

> "You wonder why we're hot, John,
> Your mark wuz on the guns;
> The neutral guns that shot, John,
> Our brothers and our sons."

The Committee on Foreign Relations in the Senate refused, by an unanimous vote, to recommend its ratification. Caleb Cushing, whose influence was potent with the new administration, tried to take a judicial view of the treaty, but could not help being indignant at what he considered to be a shameful surrender of our rights. President Grant himself expressed his disapproval. It was certain that the Senate would be strongly against the Convention.

No further arguments were needed to determine the action of the upper House. Nevertheless Charles Sumner, who was Chairman of the Senate Committee of Foreign Affairs, insisted on delivering a carefully prepared address to that body, — an address which he him-

self described as "friendly and pacific in tone." The accuracy of Sumner's judgment may be gathered from his assertion that our claims against Great Britain involved not only "direct or individual losses" amounting to $15,000,000 but also compensation for the prolongation of the war, which was "directly traceable to England" and her Proclamation of Neutrality. With this as a premise, he pointed out that "through British intervention the war was doubled in duration"; therefore England was responsible for two thousand million dollars in reparation for *national* injuries. It has been maintained, probably with truth, that Sumner expressed with much accuracy the feeling of the country as a whole; but it was a most unfortunate utterance. Sumner was an extremist, an emotionalist, a rhetorician. He was right in wishing the rejection of the Johnson-Clarendon Convention, but he was wrong in seizing the occasion for asserting a claim which was preposterous. Even Adams, who certainly had no reason to be prejudiced in favor of Great Britain, wrote, after reading Sumner's speech:

> "The practical effect of this is to raise the scale of our demands of reparation so very high that there is no chance of negotiation left, unless the English have lost all their spirit and character."

Just as everybody had at first applauded Wilkes for his seizure of Mason and Slidell, so now the popular sentiment praised Sumner for his daring arraignment of Great Britain. The Senate cast only one vote in favor of the Johnson-Clarendon Convention. This rejection, however, would have passed without much adverse comment in England had it not been for Sumner's speech, which naturally startled the British Ministry. The tension of those critical days was not lessened by the sugges-

tion, emanating from Senator Chandler but approved by Sumner, that the United States would be glad to accept the cession of Canada as a reasonable satisfaction for our claims. Fortunately there was an inevitable reaction. Grant had been inclined to approve of Sumner's doctrine, and even the usually cautious Fish had admired the address; but the latter, upon reflection, saw that Sumner had gone too far, and watched for an opportunity to renew negotiations.

The spectre of the "national injuries" thus revived by Senator Sumner was destined to haunt the negotiators of both countries during all the subsequent proceedings in connection with the *Alabama* case; and the statement of American injuries as there outlined was never forgotten until the Geneva Tribunal decided that no damages could be awarded for "indirect claims." The successor to Reverdy Johnson was John Lothrop Motley, the historian, who had been appointed by Fish at Sumner's request; and, in the summer of 1869, after the Johnson-Clarendon Convention had been rejected, it was an important question just what Motley's instructions should be. A "memoir" drawn up by Motley himself proved to be unsatisfactory to either Fish or Sumner; and the matter was complicated by the fact that there was an increasing difference of opinion at this time between Sumner and the administration. The Senator wished, in dealing with Great Britain, to continue to emphasize our protest against the British Proclamation of Neutrality as the source of all the trouble. Grant, on the other hand, was at that moment contemplating the recognition of the belligerency of the Cuban insurgents against the government of Spain, and did not, therefore, wish to make any statement which would be inconsistent with the policy which he planned to pursue in Cuba. While Fish

did not approve of Grant's wish to obtain Cuba for the United States,[1] he did, nevertheless, support his chief in the latter's desire to abandon the specific attack which Sumner wanted to keep making on the British Proclamation.

Sumner, who had expected to control the foreign policy of the administration, now found himself out of harmony with Fish, and Caleb Cushing asked to reconcile the opposing views. On May 16, 1869, at Sumner's instigation, Cushing called on Fish to ascertain whether a possible basis for compromise could not be found. After many hours of consultation with both Sumner and Fish, Cushing succeeded in drafting a letter which did not conflict with the opinions of either official. The instructions thus prepared did not deny the perfect right of a nation to declare its neutrality in the case of civil war in another country; but they did assert with some positiveness that England's Proclamation of Neutrality was supplemented by "acts causing direct damage to the United States." Cushing, who agreed with Sumner in condemning England's recognition of Southern belligerency, was willing to admit, if necessary, that she was technically justified in taking such action; but he still insisted on the unfriendly *animus* behind it.

For a time after Motley's arrival in London in June, 1869, the Ambassador seemed to have the confidence of both governments. On July 19, Sumner wrote to Caleb

[1] Grant in August, 1869, drew up a proclamation according belligerent rights to the Cuban insurgents, signed it, and sent it to Secretary Fish, with the request that the latter send it out with the official seal. Fish, with his usual sagacity, saw the absurdity of such a move, and, with a daring quite uncommon under such conditions, deposited it in a vault. When Grant again remembered the document, he had come to his senses, and was ready to thank Fish for keeping him from a colossal blunder.

Cushing, suggesting that it might now be proper to present the American case to England, with full details, but "without any demand of any kind." He added:

"England must know our grievances before any demand can be presented. When this is comprehended, a settlement will be easy."

In August, Sumner called upon Fish, and made the same proposal; and Fish asked Sumner to draft a memorandum of his views. The Senator was fatigued and, thinking that such a paper would perhaps be better drawn up by another, mentioned Cushing's name. The latter, who was certainly never too tired to prepare a diplomatic document, then wrote in his own hand the well-known despatch to Motley, dated September 25, 1869.

These instructions were formally approved by Fish, and were read to the cabinet before being sent off to London with the presidential sanction. In general, Cushing followed much the line of argument already presented in a more rhetorical way by Sumner: he objected to the British Proclamation of Neutrality, on the ground that the Confederates, in 1861, were incapable of being belligerents on the ocean; he referred specifically, not only to indemnities due to individual citizens of the United States but also to the "larger account of the vast national injuries," caused by Great Britain's attitude and action. In no place, however, did Cushing insist that England's recognition of Southern belligerency would be included as a reason for a claim for damages on the part of the United States. Fish wrote Sumner October 15:

"The despatch is a calm, full review of our entire case, making no demand, but I believe covering all the ground and all the points that have been made on our side."

Outwardly all seemed to be calm in Washington. Actually, however, things were not going well between Grant and Fish on the one hand, and Sumner and Motley on the other. Motley, who conceived of himself as being almost Sumner's personal representative, constantly stressed, in his official and social relations with the English people, our unabated irritation at the British recognition of the Confederacy. Grant became more and more annoyed with Motley, and instructed Fish to dismiss him. He was asked to resign on July 1, 1870, but remained at his post until December, when he was formally removed. In the meantime our government contented itself with transferring the scene of further negotiations to Washington, thus relieving Motley of any responsibility for the *Alabama* claims.

Caleb Cushing had already appeared in the rôle of intermediary; and now once more, during the interchanges leading directly to the Treaty of Washington, he was responsible for initiating the plan which was later carried out. Mr. John Rose, a member of the Canadian government, had been Great Britain's Commissioner on the Joint Tribunal established in 1863 to arbitrate the suit of the Hudson's Bay and Puget Sound Companies against the United States, in which suit, it will be remembered, Caleb Cushing had acted as American Counsel. Rose and Cushing at that time became very intimate, and certain temperamental similarities helped to sustain their friendship. As they discussed the *Alabama* problem in all its phases, Cushing came gradually to believe that Rose, with his adroitness and tact, might be able to renew the overtures in a manner that would be agreeable to both nations. On June 26, 1869, Cushing wrote to Rose, who was then in Ottawa, stating that, following some suggestions in an earlier correspondence. he had

arranged for Rose to have an interview with Secretary Fish. He went on:

"I am not sanguine of *immediate* conclusion of such a treaty as either you or I might desire. But I think the time has arrived to *commence,* trusting that discretion, patience, and goodwill on both sides may eventuate, in this important matter, satisfactorily to the two governments. . . . In view of the disposition which the Senate of the United States has recently shown to assume more than its due, or at least than its usual part, in the determination of international questions, you will appreciate the unreadiness of the Executive, at the present time, to take upon itself any spontaneous or doubtful ventures, especially on the side of England."

On July 8, Rose arrived in Washington, and, accompanied by Cushing, called at the Department of State. On the following day these gentlemen, in conference with Fish and without consulting Senator Sumner, discussed the basis of a possible settlement in all its details, and Rose, sufficiently enlightened, sailed at once for England. When he returned in 1871, it was as an accredited British Agent, authorized to negotiate informally for a joint commission to settle forever the points in controversy.

Meanwhile Grant, adopting a suggestion made by Cushing, had recommended in his annual message of December 5, 1870, that the Federal Government settle the claims of individuals and thus secure the undisputed ownership of all indemnities arising out of Great Britain's negligence in the cases of the *Florida,* the *Alabama,* and other Confederate cruisers. This threatening gesture doubtless assisted the British cabinet in deciding upon the proper instructions for Rose. At any rate the latter, upon the very day of his arrival, had a long interview with Secretary Fish, as a consequence of which he submitted, on January 11, 1871, a memorandum embodying

the ideas of his government. Armed with this document, Fish then arranged for a conference with Sumner, — who thus far had not been consulted, — and talked with him regarding the British proposals. Sumner refused at the time to commit himself, but two days later sent to Fish a brief statement, in which he said in part:

> "The withdrawal of the British flag cannot be abandoned as a condition or preliminary of such a settlement as is now proposed. To make the settlement complete, the withdrawal should be from this hemisphere, including provinces and islands."

To us of the twentieth century the tone and substance of Sumner's ultimatum seems not only ridiculous but almost insane. The insistence on this policy would have meant nothing in the end but war between the two Anglo-Saxon countries, and would have plunged the world into a bloody struggle for supremacy on the North American Continent. It was, of course, quite clear to the cool-headed Secretary of State that Sumner, in this mood, could be of no service to the pending negotiations.

In other ways also, Senator Sumner had taken a stand in opposition to the administration. Grant had earnestly hoped to acquire the island of San Domingo, and, when his unofficial agent, Orville E. Babcock, brought back from that island a treaty of annexation, the President insisted, in the face of cabinet indifference, on making it a matter of government policy. In the Senate Committee on Foreign Relations, Sumner opposed ratification, and later, in spite of Fish's friendly advice, spoke in the Senate against the treaty, which was eventually defeated. When Morton offered in the Senate a resolution for a commission of investigation, Sumner made an impassioned speech, in which he denounced the President's imperialistic tendencies. It was then that Grant, disgusted with

Motley and now angry with Sumner, made up his mind that the latter must be deposed from his position as Chairman of the Senate Committee of Foreign Affairs; and the Senator's astounding attitude towards Great Britain merely strengthened the President's resolution. With his military training, Grant was not accustomed to opposition from those whom he regarded as subordinates. On March 9, Sumner was removed from his Chairmanship, the ostensible reason being his lack of personal and social relations with Grant and Fish.

The disposition of the two nations being now in the direction of a speedy settlement, they soon agreed, after the usual interchange of notes, upon a project submitted by Sir Edward Thornton, the British Ambassador, for the establishment of a Joint High Commission, made up of five Englishmen and five Americans. The British representatives were Earl de Grey, Sir Stafford Northcote, Sir Edward Thornton, Professor Montague Bernard, and Sir John Macdonald (the Canadian Premier); the Americans were Secretary Fish, General Schenck (who had succeeded Motley at the Court of St. James), Judge Samuel Nelson, Ebenezer Rockwood Hoar, and George H. Williams.

The arrival of the British emissaries in Washington was made the occasion for a season of gaiety. In spite of the imminent break between Grant and Sumner, everything proceeded with the utmost amicability. Caleb Cushing, having taken a furnished house, was able to entertain all the English diplomats at his own table. Sumner, who was still on good terms personally with most of the commissioners, gave a large dinner for them, at which Cushing was one of the important guests. The latter occupied a curious position; not connected in any official capacity with the Commission, he was nevertheless

called frequently into conference with them and his advice was constantly sought.

The Commission finished its work in ten weeks of labor, the completed treaty being signed on May 8. In general, it was highly satisfactory to the Administration, even to Sumner, who forbore to oppose it in the Senate. Containing forty-three separate articles, it undertook to cover many points, including coast fisheries, river navigation, boundary disputes, and other subjects of difference. Primarily, however, it was concerned with the *Alabama* claims, with which the first eleven articles had to do. It opened with a concession to American wishes in the form of an expression of regret on the part of Great Britain for "the escape, under whatever circumstances, of the *Alabama* and other vessels from British ports, and for the depredations committed by those vessels." The most significant section provided for the submission "of all the said claims, growing out of acts committed by the aforesaid vessels and generally known as the '*Alabama* claims'" to a Tribunal of Arbitration, composed of five men, who were to meet at the neutral city of Geneva, Switzerland, there to settle all matters referred to them for decision. As a basis for judging these questions, the Commission agreed upon three rules, stating that a neutral government is bound (1) to use "due diligence" in preventing the fitting out, within its jurisdiction, of any warlike vessel, or the departure of any such vessel to the aid of either belligerent; (2) not to allow vessels of a belligerent to use its ports as a naval base; and (3) to exercise a similar "due diligence" to prevent any violation of "the foregoing duties and obligations." This Treaty of Washington, as it was called, was ratified by the Senate, and formally promulgated by the President on July 4.

The machinery required for such a tribunal as that arranged for in the Treaty is always elaborate. Neither the United States nor Great Britain was likely to underestimate the importance of this court or its functions, and the other nations who were designated to choose arbitrators performed their parts with discretion. On the Board of Arbitrators, Charles Francis Adams, now in retirement after his fatiguing years at the Court of St. James, was wisely appointed to represent the United States. The British Arbitrator was Sir Alexander Cockburn, Lord Chief Justice of England, who, in spite of his high reputation as a jurist, proved to be choleric, stubborn, and intolerant. The other three were Count Frederic Sclopis (named by the King of Italy), Jacques Staempfli (the representative of the Swiss Republic), and Baron d'Itajuba (appointed by the Emperor of Brazil). Each of the two contesting nations had its agent, or general representative, the American being Joel Chandler Bancroft Davis, son of Caleb Cushing's old friend, Governor John Davis, of Worcester, and nephew of George Bancroft. Bancroft Davis (as he was commonly known), had been Secretary of the Joint High Commission in Washington, was then Assistant Secretary of State, and was well versed in all the technicalities of diplomatic procedure. The British agent was Lord Tenterden.

Grant and Fish had early agreed that Caleb Cushing must in some capacity be included in the American delegation. With this in view, Cushing had remained in Washington through the summer of 1871, studying various phases of the great international controversy. As autumn drew near, he spent many hours in conference with Bancroft Davis, who was busy preparing the American "Case," which, by the terms of the Treaty of Washington, had to be ready for submission to the Arbitrators

and the British Agent by December 16. When it became evident that counsel would be required to prepare the American Argument, it was obvious that no better choice could be made than Cushing, and, on September 4, 1871, he received his appointment. One of his colleagues was to have been William Morris Meredith, of Pennsylvania, formerly Secretary of the Treasury, who, however, was obliged to decline because of ill health. Additional invitations were then sent to Benjamin R. Curtis, of Boston, and William M. Evarts, of New York. Evarts accepted, but Curtis, who was ill, could not leave this country, and his place was filled by Morrison R. Waite, a lawyer of Toledo, Ohio. The three counsel thus selected, — Cushing, Evarts, and Waite, — represented probably the foremost legal talent in this country at that period. Cushing, the oldest, was also the most experienced in international law; but the others were skilful attorneys, and, working with Cushing in complete harmony, made their case formidable through their unity of attack as well as through their individual brilliancy.

The American " Case " prepared by Davis was printed in galley proof and sent to several authorities, including President Woolsey, of Yale, Judge Ebenezer Rockwood Hoar, William B. Lawrence, and the Secretary of State, as well as Caleb Cushing, the last of whom made some valuable changes and additions. In its final form it filled eight octavo volumes, containing 5442 pages. Although there have been various opinions regarding its merit, those who rightly look upon it as a form of special pleading and not as an impartial statement of facts will be bound to admit that it has great force and clarity of expression. It was intended to be an outline of the plaintiff's argument, not in any sense a full discussion of the matter from all angles. It was correctly assumed that

Great Britain would have her own "Case" to present, and that her Agent was quite competent to present the other side of the controversy to the Arbitrators.

Taken as a whole, the American "Case" is a lucid and vigorous indictment of British policy during the Civil War. After reviewing the historical facts regarding the attitude of Great Britain towards the Lincoln Administration, the author goes on to state specifically the claims of the American Government because of the destruction of merchant ships and their cargoes. The Treaty of Washington, it will be remembered, had referred to the Geneva Tribunal "*all* claims of the United States growing out of the acts committed by certain vessels"; it was now the American contention that the inclusive word *all* left the "indirect" or "national" claims still within the range of discussion. The Treaty itself had not referred in any way to either "direct" or "indirect," or to "individual" or "national" claims. Now Davis intimated that Great Britain ought to reimburse the United States for the expenses of the war incurred after July 4, 1863. In other words, the American "Case" took something of the point of view shown in Sumner's speech. There was, however, a marked difference in tone and spirit. Sumner was a vehement and passionate orator, attempting to rouse national feeling against a foreign power; Davis was a cool and courteous advocate, making the most of a cause which was later to be determined by wise judges. Sumner made certain definite claims, even setting the amount in terms of millions of dollars; Davis simply stated the facts as Americans saw them, and made no specific demand on the British Government. The judgment of posterity cannot excuse Sumner for his injudicious tirade; but it must be admitted that Davis would have been a poor advocate for his client, the

United States, if he had not presented every possible claim against the defendant in the international court.

The American "Case" has been subjected to some severe criticism by James Ford Rhodes, who considers it, apparently, more in the light of an historical treatise than of a lawyer's argument. That Davis made the most of Great Britain's diplomatic misdemeanors is a fact; but he was preparing a partisan document for a particular legal purpose. That some of his contentions were not afterwards sustained does not necessarily detract from the quality of the "Case," as a bit of special pleading. Those who are tempted to condemn Bancroft Davis's work must not ignore the deliberate judgment of Count Sclopis that it was the "Case" prepared by Davis which "won the cause." When it was reported in some American newspapers that our counsel were not in sympathy with the agent, both Evarts and Cushing wrote a public letter, stating that the "Case" had their full and unqualified approval. Possibly Caleb Cushing was too intimately connected with the writing of the "Case" to be an unprejudiced judge; but he later said of it, after the decision had been given:

> "It was my opinion on reading the American Case for the first time, and is my opinion now, after repeated readings, that it is not only a document of signal ability, learning, and forensic force, — which indeed everybody admits, — but that it is also temperate in language and dignified in spirit, as becomes any state paper which is issued in the name of the United States."

Cushing was commonly thought to have had a larger share in the preparation of the "Case" than was actually his. The London *Daily Telegraph* for February 3, 1872, said editorially:

"We turn . . . to the singularly able, versatile, and subtle veteran who is well known to be supreme over the foreign policy of President Grant, and to have a more potent voice in the control of the State Department at Washington than Mr. Hamilton Fish, its ostensible director. . . . Throughout the negotiations of which, during last March and April, Washington was the scene, it was notorious that every successive *crux*, — every tangled web which perplexed the American Commissioners, — was referred for adjudication to Mr. Caleb Cushing. He is the American parent of the Treaty of Washington; nor is it difficult to discern his hand in the 'American Case' which has just made its ill-omened appearance at Geneva. Englishmen who recollect the despatches and utterances of Mr. Caleb Cushing . . . will not wonder at the minatory and querulous accents which pervade the 'American Case.'"

The truth is that, while Cushing approved of the "Case" in nearly every respect, it was really written by Davis in the first instance. However much Davis may have been influenced by his many conferences with Cushing, he was the author and deserves the credit which that distinction ought to give him.

Although Adams, Davis, and others of the American party sailed in the late autumn of 1871, and although the Tribunal was formally organized at Geneva on December 15, Cushing lingered in Washington, awaiting final instructions from the Department of State. On December 6, he wrote his sister-in-law:

"I ought to have stated to you that my plan is to pass the months of January, February, and March at Paris or London, but not at housekeeping. I must commence housekeeping at Geneva by the 1st of April and so continue through May, June, July, August, September, with excursions to Vienna, Berlin, Dresden, and Rome.

I take with me to look after me in case of illness, a distinguished military gentleman, decorated and promoted for gallantry in the field, namely, the colored freedman who has been

with me for years here in Washington and who accompanied me to South America."

On the evening of January 17, at Wormley's Hotel, in Washington, some of Caleb Cushing's intimate friends gave him a dinner in honor of his seventy-second birthday. Samuel Hooper, of Massachusetts, presided, and the others present were Senator Anthony, General Benjamin F. Butler, General Banks, Attorney General Williams, Senator Chandler, Ben: Perley Poore, and Mr. Kingman, — a veritable Council of Ten. The gathering was a merry one, and a fitting recognition of the manifold achievements of the guest of honor. A day or two later Cushing was on his way to New York, where he was joined by his new secretary, Mr. Frank W. Hackett,[1] a young Harvard man and a lawyer, who had exceptional qualifications for the position of confidential assistant. Cushing's two half-brothers, John N. Cushing and William Cushing, came to New York to bid him farewell. On a bleak and cloudy Saturday afternoon, — January 27, — Cushing, with Mr. Hackett, Mr. Charles C. Beaman (Solicitor for the United States), Mr. John Davis (Secretary to Mr. Bancroft Davis), and Mr. Edward T. Waite (Secretary to his father, Morrison R. Waite), went on board the *Ville de Paris*. On the voyage, Cushing, as the most distinguished passenger, sat at the captain's right. Mr. Hackett presents an interesting picture of Cushing's habits on the boat:

[1] Mr. Hackett, who was born in 1841 at Portsmouth, New Hampshire, graduated from Harvard in 1861 and was admitted to the bar in 1866. After his return from Geneva, he practiced law in Washington for many years, retiring in 1920. He is the author of several books, including *Reminiscences of the Geneva Tribunal* (1911), which gives an excellent account of the work of the Board of Arbitration. Much of the material in this chapter is taken from Mr. Hackett's story of his experiences.

"My chief, good sailor that he was, appeared to enjoy every moment on shipboard. He would pace the deck clad in an old coat coming down to his heels, and a tight-fitting cap that had little to do with the prevailing fashion. He was no stranger to the democratic gathering of the smoking-room. Let a question be asked, and Mr. Cushing would respond with a flood of information. The more out-of-the-way the topic, the more abundantly would this remarkable man draw upon a store of memories seemingly inexhaustible. If one ventured an inquiry bearing a little too closely upon the subject of his mission abroad, the rest of the company could only admire the ingenuity and kindly shrewdness with which the Counsel for the United States set to talking about something else."

On the morning of February 3, the party disembarked at Brest, proceeding on the same day to Rennes. Here Mr. Hackett, not habituated as yet to the General's exuberant energy, was amazed at being awakened at four o'clock by his impatient chief, who wished him to go to early mass at the cathedral. As the Secretary was soon to perceive, it was Cushing's practice to learn as much as possible of the monuments, the customs, and the people of every place through which they passed. At three in the afternoon they boarded a train for Paris:

"A stock of provisions had been judiciously laid in for the journey; and Andrew, who was skilful at the business, took pains in preparing the repast. As upon the day previous, Mr. Cushing showed himself to be livelier than even the youngest of us. He told several good stories, in an animated tone, and generally proved himself to be a delightful companion. If ever such an article existed as General Kirby's forty-year-old sherry, then that was just what Andrew produced from our bountiful hamper, and what we employed in loyally drinking to the success of the United States."

They arrived at the capitol at midnight and went at once to the Hotel Westminster, in the Rue de la Paix, where they were expected and given a warm greeting.

When Caleb Cushing left New York, everything was serene on the political horizon. He reached Paris less than a fortnight later to find the British press aroused as it had not been for a generation. As soon as he was settled, Cushing wrote his sister-in-law:

> "On arriving here we find John Bull with his tail up, pawing the ground, and bellowing away in the most extraordinary manner, on account of our 'Case.' What is to come of this I do not know. I do not expect war; but I doubt very much whether England will go on with the Arbitration."

Cushing's opinion was certainly justified by what he could learn of the facts. The presentation of the American Case in December had, of course, revived the now familar issue of the "indirect" claims. Early in February, while Caleb Cushing was still on the ocean, General Schenck had cabled Fish that leading London journals were demanding our withdrawal of this section of the American argument. Fish coolly replied, "There must be no withdrawal of any part of the claim presented." During the ensuing weeks, no terms were too opprobrious for the British press to use in describing the American Case. Gladstone and Disraeli for once agreed in denouncing the "indirect" claims as "wild and preposterous." Meanwhile Fish, supported by Grant, maintained consistently the position that, while the American people had never expected any monetary award on account of the "indirect" claims, they did insist that it was the business of the Tribunal of Arbitration to settle the question of these claims, and that the United States would "unhesitatingly accept the decision." In a despatch of May 28 to Schenck, Fish stated bluntly that his government would stand firm on the general proposition that it had a right under the Treaty of Washington

to present the "indirect" or "national" claims; that it must have them disposed of by a decision either for or against the liability of a neutral for claims of that description; and that, if the liability under such circumstances were definitely determined, Great Britain must pay an indemnity. What Fish wanted, in other words, was a ruling which would, for all time, settle, so far as international law is concerned, the responsibility of a neutral government under similar conditions in the future. Fortunately all the correspondence between Granville and Fish, — and it was undoubtedly extensive, in a private as well as in a public way, — was conducted in a friendly spirit; and the mutterings of the British press, together with the intermittent growling of British patriots, did not materially affect the determination of the two governments to accomplish a peaceful settlement.

Although Caleb Cushing read the London newspapers day by day with a troubled mind, he did not allow his anxiety to prevent him from exploring Paris. More than forty years had gone by since he had last seen the French capital, but he still remembered vividly all the points of interest. It was the period immediately after the Franco-Prussian War, when the city was slowly recovering from the double disaster of the prolonged siege and the Commune. The season was, however, a gay one, by reaction from the sombreness and sobriety of wartime, and the Cushing party, after making and receiving the customary formal calls, found themselves much in society. Cushing soon left his hotel and took a house in the Rue Galilee, near the Arc de Triomphe, where he pursued his usual active routine. He paid his respects to M. Grevy, President of the French Assembly, at Versailles; he chatted with the venerable Thiers, — who was then seventy-five, — and with the still more

venerable Guizot, — who was then eighty-five, — about the days of the great Napoleon; he visited the sewers and the catacombs of Paris; he went often to the theatre and still more frequently to luncheons and dinners. He won the friendship of Washburne, the American Minister, a frank and genial Westerner, who was then full of his extraordinary experiences during the siege. But these pursuits were his diversions. A good part of every day was devoted to study. Although his fluency in French was already the envy of his colleagues, he engaged a gifted young Parisian to converse with him three hours a day on current topics, and thus not only improved his accent but also kept in touch with contemporary events in France.

Meanwhile Mr. Davis and his assistants, as if oblivious to the diplomatic bickering which was going on between Washington and London, were busy preparing the American "Counter-Case," which was printed and bound by April 12. Adopting Cushing's advice, Davis made this document brief and limited in scope; but he appended to it a large amount of documentary material supporting the statements made in the text. Davis consulted Cushing nearly every day during the preparation of this "Counter-Case," and it represented exactly the latter's views on every matter considered. Both Davis and Cushing then went to Geneva, arriving there on April 15 for the formalities attendant upon the interchange of the respective "Counter-Cases," and returning to Paris shortly afterwards.

The next event on the program was the preparation of the American "Argument," a task which devolved upon the counsel. It was the moment when the controversy regarding the "indirect" claims was at its height, and there were few optimistic enough to believe that the

negotiations would be carried much farther. Nevertheless Cushing and his coadjutors were not allowing themselves to be caught without legal ammunition. With the British "Case" and "Counter-Case," — documents which were confined largely to a discussion of technical points of international law, — before them, they toiled unceasingly, often working far into the night over some problem of phraseology. When completed, the "Argument" contained thirteen chapters, comprising some 560 pages. The sections assigned to Cushing included Chapter III, — *General Discussion of the Questions of Law;* Chapter IV, — *Miscellaneous Considerations:* and a good part of Chapter XIII, — *Nature and Amount of Damage.* The substance of these passages, says Mr. Hackett, was dictated by Cushing at his home in the Rue Galilee, and with such care and accuracy that no revision was required beyond a few verbal corrections for the betterment of the style. In this respect, indeed, Cushing's sections are rather more direct and incisive than those of his colleagues, one of whom, — Waite, — was inclined to be obscure, and the other, — Evarts, — involved and abstruse. The complete Argument was handed to Mr. Bancroft Davis in good season on June 10.

When the three American counsel set out for Paris on the morning of June 13, they had little hope that the Arbitration would go on. As they rolled along through the picturesque towns of Dijon and Macon, they talked over their prospects in a mood of despondency, for it seemed only too likely that all their industrious days and toilsome nights would be wasted. Reaching Geneva, they found the Arbitrators and the British delegation already established. Cushing and his *entourage* took up temporary quarters with Mr. and Mrs. Davis at the Hôtel Beau Rivage, where, when he appeared in the

lounge, he found himself harassed by a swarm of correspondents. On the next day, Saturday, June 15, the Tribunal of Arbitration formally assembled in the huge Florentine Hôtel de Ville, where a room called "Salle des Conferences" had been set aside by the city for the gathering, — a large hall, which had just been used for a convention of the *Comité International des Secours aux Militaires Blesses,* and which still had on its walls the flags which had been hung there as decorations for that meeting. On a raised platform along one wall sat the Arbitrators, with the President, Count Sclopis, in the center; the agents and the counsel occupied desks at either side of the space directly in front. No one was admitted except those officially connected with the Tribunal. Open covenants openly arrived at had not yet become a principle of diplomatic procedure, either in theory or in practice.

The first day's proceedings did not consume much time. As Cushing had anticipated, the annoying issue of the "indirect" claims blocked progress and seemed, indeed, likely to wreck the conference before it was even under way. Bancroft Davis presented the printed American Argument to each Arbitrator in turn; then Lord Tenterden coolly requested an adjournment for eight months, on the ground that some fundamental differences in point of view between the two nations required a supplementary convention before any agreement could be expected. In reply, Davis asked for a delay of two days, in order that he might consult with Washington. This was readily granted. The Tribunal rose, after a session of only a few minutes, and the members walked away in ominous silence.

At the risk of repetition, the essential matter in dispute ought to be restated here. The British denied cate-

gorically the right of the Tribunal, under the Treaty of Washington, to consider or pass upon the question of the "indirect" or "national" claims. The Americans, while conceding that the decision would probably be against them, insisted that, under the Treaty, they were justified in asking that such claims be taken up and ruled upon by the Arbitrators. Some British statesmen evidently believed that the Commissioners, at the time of the framing of the Treaty of Washington, had reached an unexpressed "gentlemen's agreement" that the "indirect" claims would not be pressed by the Americans. Both Caleb Cushing and Bancroft Davis were intimately connected with the preparation of the Treaty of Washington; if there had been such an agreement, one or both would have known about it; and each of them gave his testimony to the effect that he had never heard of such an arrangement. Such an understanding, even if it had existed, would have bound neither government. The sole test must necessarily be the text of the Treaty; and, in interpreting this, England and the United States reached diametrically opposite conclusions. Neither nation would apparently yield. The deadlock could be broken only through some form of compromise.

Such a compromise the representatives of both countries at Geneva were eager to find, — if only it could be consistent with the honor of both parties. All that Saturday afternoon and Sunday the American Agent and Counsel were busy considering possible methods of disposing of the difficulty. Davis had already approached Adams with a proposal that the Arbitrators should take up first of all the matter of the "indirect" claims, and the latter had detected in this plan a basis for a fair agreement. With this scheme in mind, Adams consulted with Lord

Tenterden, and secured from him a statement, which was supplemented by certain details suggested by Sir Roundell Palmer, the British Counsel. By Sunday afternoon, as a result of several conferences between individual persons, the problem had been reduced to a proposition that, if the Arbitrators would unite on an extrajudicial decision to the effect that the "indirect" claims did not constitute a foundation for money damages, then the two nations involved could, without losing their self-respect, approve this judgment, and the Tribunal could go on with its work, excluding the "indirect" claims from its jurisdiction.

At this point the skilful hand of Caleb Cushing, with its long experience in the preparation of diplomatic documents, made itself felt. He prepared a draft of such an extrajudicial decision, which was shown to Mr. Adams and by him taken to Count Sclopis. Into the intricacies of the delicate negotiations which followed, it is not necessary here to go. The important fact is that, on Wednesday, June 19, Count Sclopis, speaking for all the Arbitrators, said, in replying to the earlier request of Lord Tenterden for an adjournment of eight months, that such a postponement would merely keep both nations in a state of "painful suspense," and might end in making the Arbitration "wholly abortive." He then added that, in view of all the existing conditions, the Arbitrators had thought it right to state that, after perusing the American Argument, they had arrived, "individually and collectively," at the conclusion that the "indirect" claims did not constitute good foundation for any award of damages, and ought, therefore, to be excluded from the consideration of the Tribunal. It was an effective method of cutting the Gordian knot which no one seemed able to untie.

The next step was to secure the consent of both nations to this ruling. Caleb Cushing, who had himself written the extrajudicial decision, found naturally no difficulty in recommending to his home government that its substance should be approved. Fish, on June 22, cabled the assent of the President, and took occasion to say:

> "We have no desire for a pecuniary award, but desired an expression by the Tribunal as to the liability of a neutral for claims of that character. . . . The President, therefore, accepts the opinion and advice of the Counsel . . . and authorizes the announcement to the Tribunal that he accepts their declaration as determinative of their judgment upon the important question of public law as to which he had felt it his duty to seek the expression of their opinion; and . . . he regards the claims set forth in the Case presented on the part of the United States for loss in the transfer of the American commercial marine to the British flag, the enhanced payment of insurance, and the prolongation of the war, and the addition of a large sum to the cost of the war and the suppression of the Rebellion, as adjudicated and disposed of; and that, consequently, they will not be further insisted upon before the Tribunal by the United States, but are henceforth excluded from its consideration by the Tribunal in making its award."

Somewhat more difficulty was brought up by the British, who at first wished to have it implied that the indirect claims were relinquished by the United States. Finally, however, the phraseology was altered to the satisfaction of both parties to the dispute. On June 27, Great Britain sent its declaration of acceptance, and Lord Tenterden then proceeded to file the British Argument. Davis promptly sent this significant message to Secretary Fish: "British Argument filed. Arbitration goes on."

Count Sclopis, who had a gift for doing the tactful thing, then made a brief and appropriate address announcing the high and impartial aims of the Arbitrators.

Good sense had triumphed, as it has so often done in our relations with Great Britain. We are told that Grant received the tidings with tears in his eyes; and Granville, after many anxious hours of suspense, was in high glee when the news of the compromise reached him.

As for Caleb Cushing, no one in the American delegation had held firmer views with regard to the "indirect" claims. Without going to the extreme advocated by Senator Sumner, Cushing had, nevertheless, favored a vigorous insistence on our national injuries and had supported Bancroft Davis in preparing those sections of the American "Case" bearing on this matter. But he was not so obstinate as not to recognize the point beyond which nothing was to be gained by a perverse stubbornness. He had brought all his consummate powers of logic and persuasion to the task of effecting a working agreement, and the advocates of compromise found in him their most ardent supporter. It was his conviction that, as a consequence of the declaration by the Americans, the United States had secured what was, for all practical purposes, a decision "in such a form as to constitute, in effect, a rule of law, morally binding on Great Britain and the United States."

The real danger-point having been passed, the Tribunal was now ready for its business. Each side had, as we have seen, duly filed its "Case," its "Counter-Case," and its "Argument," — in the last of which the substance of the "Case" and "Counter-Case," was summed up. So confident, however, had the British been of a long adjournment that they had apparently neglected to prepare an "Argument" worthy of their cause; and Sir Roundell Palmer wrote Mr. Evarts, suggesting a delay until early in August. The Americans, while wishing not to be thought deficient in courtesy, could not

recognize this proposal as admissible, and Mr. Evarts accordingly declined to consent to any postponement. Meanwhile Davis, in anticipation of such an emergency, asked Cushing to draft a memorandum explaining the American position, which, translated into French, was handed to Mr. Adams for the consideration of the Arbitrators. When the matter finally came up before the Tribunal, that body, in accordance with Adams's suggestion, merely said that, if it needed further enlightenment, it would call upon the respective counsel for it.

After a brief holiday over the Fourth of July, the Tribunal reassembled on July 15, at which time another source of possible controversy appeared. Mr. Staempfli had outlined a method of procedure by which each vessel would be taken up separately, the Arbitrators ascertaining whether Great Britain, in each particular case, was responsible to the United States for an indemnity; while Sir Alexander Cockburn preferred the plan of determining in advance the abstract principles of law. Lord Cockburn, who by this time was quite evidently the *mauvaise garçon* of the Tribunal, was over-ruled by a vote of four to one, and the members proceeded to take up the case of the *Florida*, the first vessel on the list.

As Caleb Cushing was a severe critic of the English Chief Justice, his evidence may perhaps seem prejudiced; but the ensuing events, as described even by unpartisan eyes, reveal Lord Cockburn as lacking in the proper judicial temperament. The facts on the *Florida* were so clear that Staempfli, the first Arbitrator to express an opinion, had no hesitancy in finding Great Britain to have been at fault. Cockburn, however, who had a high reputation in England and was accustomed to having

his own way,[1] dissented from Staempfli in a speech which consumed the parts of two days, and in the course of which he seemed at times to have abandoned all attempt at self-restraint. On July 22, the opinions of the other three Arbitrators were announced, all against Great Britain; whereupon Lord Cockburn, with a display of temper unworthy even of an advocate, to say nothing of a judge, spoke in a most offensive manner, actually describing his colleagues as "men not educated in the law, who are now examining questions about the great laws common to nations for the first time." So insolent was Cockburn's tone that the President, Count Sclopis, rightly administered a reproof to the British Arbitrator. Cockburn apologized; but he had injured his cause far more than adverse evidence could ever have done. Lord Tenterden wrote Granville that the effect of Cockburn's words were decidedly damaging to the British prospects.

In defiance of the intimation of his associates on the Tribunal that no further argument was required, Cockburn now insisted that his nation should have an opportunity of discussing certain specified points, among them the whole general problem of "due diligence" in cases like that of the *Alabama*. The American Agent, wishing to afford his opponents every chance for fair play, made no objection; and the Arbitrators, yielding to the insistence of the British, at last agreed to consider Sir Roundell Palmer's "Supplemental Argument." This proved to be practically a complete review of the questions at issue, without any new points of any special sig-

[1] Cushing's first estimate of Cockburn, before meeting him, was high. On November 27, 1871, he wrote a friend, — "I confess I dread Sir Alexander, not merely as a lawyer, but as a man of the world. He speaks French like a Parisian, and has all the other French accomplishments which distinguished the Scots."

nificance. The main contention was that England had, in 1862, an adequate law of her own in the Foreign Enlistment Act of 1819, and that she had followed literally the correct interpretation of that act, dealing with each new situation "in a legal course," according to "accustomed methods of civil administration." On August 5 and 6, Mr. Evarts made an oral reply to some of Palmer's observations; and Mr. Waite, at Davis's request, submitted a written argument on other special points.

The convincing answer to Sir Roundell Palmer was, however, made by Caleb Cushing, in what was known as his "Reply Argument" of August 6. Cushing had previously dictated this address in French to his Secretary, Mr. Hackett, and he was able to deliver it in an accent which was almost Parisian, so that the three neutral Arbitrators followed him without the slightest difficulty. Sir Roundell Palmer and Mr. Evarts had used English, which the Swiss, the Italian, and the Brazilian Arbitrators understood only imperfectly. Cushing's speech, therefore, was to them a welcome relief, and his dignified presence and clearly enunciated sentences created a pleasing impression. Long after the Geneva Arbitration was over, men remembered how Caleb Cushing, a Massachusetts Yankee, addressed an assemblage of foreigners in classical French, — French which aroused the admiration of every native Frenchman in the hall. In the course of the argument, Sclopis interrupted with a question in Italian; Cockburn objected to the colloquy which followed, saying that he did not understand that language; whereupon Cushing replied courteously that it seemed only polite for him to reply in Italian to an Italian question, and promised to prepare an English translation of the conversation before nine o'clock the next morning.

In other respects, too, Cushing's address was notable. He knew the case in its every phase. Discussion with Fish and Sumner had clarified his views and given him a complete mastery of the facts. Always a shrewd logician, Cushing now outdid himself in the lucidity of his reasoning and the compression of his style, which, without embellishment, brought home with resistless force the strength of the American position. Mr. Hackett says of the printed address:

> "Next to the Case of the United States, this paper in my judgment reaches the distinction of being the clearest and ablest exposition of the subject-matter of the controversy that is to be found in the records of the Tribunal."

Cushing's "Reply Argument" was probably the most dramatic incident of that Geneva summer. By a combination of circumstances, it was delivered at a moment which was psychologically critical. It is true that it had but little influence on the opinions of the Arbitrators, which, by this time, were already well established; but it did so ably summarize the American argument that no one could question the validity of the decision made by the Tribunal. Again, it had all the power which accompanies the spoken word, and thus affected his listeners more than many pages of manuscript could have done. It was the last of Caleb Cushing's great oratorical successes.

The story of the further proceedings of the Tribunal has been excellently told by more than one observer. In the three cases of the *Florida*, the *Alabama*, and the *Shenandoah*, the Arbitrators favored the United States, the vote on disputed points being usually four to one. For nearly three weeks the judges sat behind closed doors, without help from either Agents or Counsel.

When the time for the estimation of actual cash damages was reached, Sir Alexander Cockburn's self-control was completely disrupted, and he accused the United States of deliberately advancing fictitious claims. It was a remark made in heat, when the British Arbitrator's mind was obviously disturbed; but Mr. Adams rightly resented it. Once more, however, Count Sclopis was on hand to preserve the peace, and Cockburn, recovering from his rage, again provided a suitable apology. Everybody was glad when, without any further disturbance, the Tribunal was able to agree on a gross award to the United States of $15,500,000 in gold.

The Arbitrators met for the last time as an official body on Saturday, September 14, a day which, as Caleb Cushing noted, was clear and warm, with the Alps standing out sharp against a background of serene blue sky. On the first occasion since its opening the Tribunal allowed guests, including members of the Swiss Government, several ladies connected with the families of various representatives, and a number of newspaper reporters. The thirty-second session opened with the accustomed ceremonies; then, at the President's request, the Secretary read in English the text of the award. When this had been done rather impressively, — for M. Favrot caught admirably the dramatic features of the gathering, — four Arbitrators, — Mr. Adams, Count Sclopis, Mr. Staempfli, and Baron Itajuba, — came forward and one after another signed duplicate originals of the decision, Caleb Cushing sitting by, as one journalist describes him, "with that dark gypsy gleam, and a flash of triumph in his luminous eyes." Lord Cockburn, still unconverted, arose and, with the brief statement that he dissented from the verdict of the Arbitrators, presented a formidable document outlining his views.

Count Sclopis, in a happily phrased and graceful address, dissolved the Tribunal, closing with an expression of gratitude to the city of Geneva for the many courtesies which it had extended. With his concluding words, the Swiss Government fired a national salute, and the members met for mutual congratulation, — all except Lord Cockburn, who, without even a courteous leave-taking, snatched up his hat and rushed from the room.

Caleb Cushing, as a spectator, thus described his emotions on that momentous Saturday afternoon:

> "It is impossible that any one of the persons present on that occasion should ever lose the impression of the moral grandeur of the scene, where the actual rendition of arbitral judgment on the claims of the United States against Great Britain bore witness to the generous magnanimity of two of the greatest nations of the world in resorting to peaceful reason as the arbiter of grave national differences, in the place of indulging in baneful resentments or the vulgar ambition of war. This emotion was visible on almost every countenance, and was manifested by the exchange of friendly salutations appropriate to the separation of so many persons, who, month after month, had been seated side by side as members of the Tribunal, or even as Agents and Counsel of the two Governments."

It would have been strange indeed if he had not shown some elation. From his point of view, the Geneva Tribunal had vindicated American rights and redressed injuries to American citizens; it had concluded a long-standing and dangerous source of discord between two great nations; it had made a decision, the direct result of which would, in the near future, prevent either country, when a belligerent, from claiming from the other neutral nation any damages which the belligerent might suffer through the lack of "due diligence" on the part of the other; and it had forever settled, through peaceful methods, a controversy which might easily have led to one of the

most horrible of wars. In reviewing the action of the Arbitrators, Cushing gave a succinct summary of their achievements:

"We, Great Britain and the United States, have in this matter shown that even a question affecting, or supposed to affect, national honor, may be settled by arbitration; and if we have not effected the establishment of international arbitration as the universal substitute for war, we have coöperated to prove by our example that the largest possible questions between contending governments are susceptible of being settled by peaceful arbitration."

Not all of Caleb Cushing's summer had been spent on the *Alabama* claims. With an energy which even the burden of more than seventy years could not abate, he had collected a small library on European economics and politics. In a very short space of time he made himself acquainted with the history and government of Switzerland, which he came to know more thoroughly than the Swiss themselves. One associate said of him that he spent his mornings in court and his afternoons in reading French novels, — which was merely a way of saying that he knew his case. On the anniversary of American Independence, when most of the Tribunal personnel had gone to the mountains for recreation, Cushing remained in Geneva, where his countrymen held a rousing celebration. At the banquet, over which Horace Rublee, the American Minister, presided, Cushing was called upon to respond to the toast "Our Country." Mr. Bent, of the Swiss *Times*, writing of the dinner, said:

"*The* speech was made by General Cushing. He said he had been studying the Swiss Constitution; and he aroused the audience, of a hundred or more, to great enthusiasm, in his

eulogy of the Confederation. I never heard a more eloquent or stirring after-dinner speech."

Cushing, moreover, seized with avidity every opportunity for meeting Swiss notabilities and for visiting points of local interest. His quest for knowledge was as insatiable as it had been when he was a Harvard undergraduate.

Nor did he neglect the social duties which naturally devolved upon a man in his position. He was a favorite at the dinner-table, where his old-fashioned gallantry had an irresistible charm. At the numerous balls held during the course of the summer, he usually appeared with some of the American party. He was an honored guest on September 7, when the Canton of Geneva gave a splendid banquet to the Arbitrators and other official representatives. Four days later, he went with the same group to Berne, the Swiss capital, at which place and at Interlaken they were the guests of the Federal Government. Hackett records that Cushing, in evening dress, was the handsomest gentleman present.

Before leaving Geneva, both the British and American delegations had photographs taken, and exchanged individual pictures with the best of good feeling. Roundell Palmer wrote a *jeu d'esprit* on the different representatives, describing Adams as,

> "A cool and long-headed man,
> Now judge of the claims which himself first began"

and Cushing as,

> "The militant lawyer, as sharp as a knife,
> Who loves to spice strongly the cauldron of strife."

After these and other amenities connected with the parting had been observed, the representatives went their

separate paths. Caleb Cushing returned for a few days to Paris, where, in a large apartment in the dingy Hôtel de Calais, he made his headquarters while he called on friends, browsed in the Bibliotèque National, and had a last glimpse of French institutions. There G. W. Smalley, of the New York *Tribune,* found him and induced him to tell his story of the Geneva Tribunal, but with a bar of secrecy which did not allow the journalist to publish the information. Smalley wrote his newspaper:

"Cushing has been called hard and cold and dry. I never found him so. I found him, then and on other occasions when I met him in private, one of the best talkers I ever met, — and I think no man a good talker in the best sense unless his talk be sympathetic as well as intellectual. . . . I breakfasted with him that day. . . . We sat down to table at eleven, and from eleven in the morning until five in the afternoon the wonderful old man poured out his stores of knowledge, of wit, of anecdote, of cynical observation and philosophy mingled with charity and humor, of kindly good-will to political adversaries and of easy contempt for those whom he distinguished as personal foes. He talked to the end with a freshness and buoyant spirit that a man half his age might have envied, and with a lucid intelligence and accurate memory that to this day fill me with admiration as the scene comes back to me, and my ear is filled again with the cool tones of his unwearied voice."

At another breakfast in late September he was one of a mixed company of French, English, and Americans, some of them among the best talkers of that generation. One of the number afterwards said:

"He held his own with the best, and there was, on the whole, nobody to compare with him in the variety and compass of his knowledge, or the neat precision, — far removed from pedantic formality, — with which sentence after sentence came from his lips. An English lady who sat opposite him and who met him for the first time, told me afterwards that she doubted whether

anybody in England among the few noted diners-out still surviving, was superior to Mr. Cushing."

Occasions like this, however, could not be frequent during his stay in Paris, for his time was still much occupied, and, on October 7, he sailed from Brest for New York. After an uneventful voyage, he drove to his familiar suite in the Astor House, where reporters at once besieged him for news, he being the first of the American delegation to return. Cushing for once talked freely, praising highly all his colleagues and expressing himself as intensely gratified at the outcome of the Arbitration. That evening he called on Secretary Fish, who happened to be in New York, and told him the American story; two days later he was in Washington, dining with Grant, chatting with old friends, and receiving the congratulations of everybody whom he met.

Caleb Cushing had always been a good hater; but during all his career he probably never cared less for any human individual than he did for Sir Alexander Cockburn. It must be repeated here that Cockburn did not make a pleasant impression at Geneva. Personally he was conceited, haughty, and intolerant. He neither paid nor received visits, so that he seemed to the others to be quite unsocial in his habits. Irritable and impatient in disposition, he had, before the Tribunal, repeatedly advanced wild charges and uttered furious words. But Cushing could have forgotten his personal distaste for Cockburn had it not been for the latter's "Dissenting Opinion," which, as we have seen, was submitted on the last day of the session.

In this formidable document, Lord Cockburn discussed certain legal propositions made under the signatures of Cushing, Evarts, and Waite, calling them "strange misrepresentations" and "assertions without the shadow of

a foundation"; he designated a portion of their argument as "an affront offered to this Tribunal, by an attempt to practice on our supposed credulity or ignorance"; and he stated that the American "Case" poured forth the "pent-up venom of national and personal hate." All this was sufficiently galling to Caleb Cushing; but, worst of all, the British Arbitrator had taken particular exception to that section of the American "Argument" which Cushing had written, and had said of certain paragraphs from Cushing's pen:

> "There is in this extraordinary series of propositions the most singular confusion of ideas, misrepresentation of facts, and ignorance, both of law and history, which were perhaps ever crowded into the same space."

Most competent judges would have admitted, in 1872, that Caleb Cushing's knowledge of public and international law was unsurpassed by any man living. He himself was not conceited, but he was quite aware of his position among American lawyers. It is no wonder, then, that he was roused to unwonted anger by the violence of Cockburn's attack. Not being the kind of person to endure criticism with patience, Cushing began, on his voyage from Brest to New York, the manuscript of a volume descriptive of the Geneva Conference, in which he proposed to pay his respects to the English Lord Chief Justice. When he found himself again settled at Wormley's Hotel in Washington, he went steadily to work, with the result that his book, *The Treaty of Washington*, appeared in March, 1873, from the press of Harper and Brothers.

Cushing undertook to present, in the compass of fewer than three hundred pages, a reasonably full account of the events leading up to the Geneva Tribunal and of the

achievements of the Board of Arbitrators. No one was better equipped than he to provide the American public with a complete and authentic history of what had been accomplished. Unfortunately the book had two serious faults. In the first place, it was hastily written and carelessly arranged, with all those defects which are so likely to be found in a volume written and printed under pressure. In the second place, it was pervaded by Cushing's dislike of Cockburn to such an extent that its main purpose seemed to be to abuse the British judge. He charged the English Arbitrator with "bad reasoning," "diffuseness and looseness of style," "habitual inconsistency of thought," and "a perverted state of passion and prejudice." He spent long paragraphs in exposing the weakness and absurdity of Cockburn's "Dissenting Opinion." It is easy to explain Cushing's indignation, and not difficult to justify it; his mistake lay in making what purported to be an impartial account of the Geneva Tribunal the medium for the venting of his own private spite. After all, the decision had been made; both nations had agreed to abide by it; and there was no necessity for raking up by-gone antagonisms. Furthermore, all that was valuable in Cushing's book, — and much of it is of the utmost importance, — was weakened by being placed in juxtaposition to other material of an ephemeral and personal nature.

If it was Cushing's hope to create a sensation in political and diplomatic circles, his desire was quickly gratified. During April his book was the topic of the hour, and its choicest passages were being rolled under the tongue in all the clubs in Washington. Newspaper comment, as usual, varied in tone. The New York *Times* said editorially:

"Mr. Cushing has spoiled an excellent work by his execrable way of performing it. . . . He has involved his own government in a piece of ungenerous and undignified denunciation of the British Arbitrator. . . . He could not help being listened to as the counsel of the United States before the Geneva Tribunal, and his utterances necessarily will be accepted as expressing the temper of the State Department, and of the President, on the subject of this book."

The New York *Evening Post*, while condemning him for his "libellous assault" on Cockburn, which threw "a gratuitous insult in the face of the British government and of British citizens," was inclined to criticise Cushing, not because what he said was untrue, but because it ought not to have been said by a representative of the American government. The *Tribune* printed a long review of the book, without, however, any critical comment except that it presented "but slight attractions to the general reader"; but it later published an editorial in which it described the volume as "inopportune, indecorous, and in every way inexpedient," and called Cushing "a chronic and ferocious anti-Anglican."

On the other hand, there were many to undertake Cushing's justification. The New York *Herald*, for instance, said in part:

"Lord Chief Justice Cockburn virtually abandoned the Geneva Tribunal before its labors were concluded and only returned to file 'reasons' which were a personal insult to the American counsel in the case and to the whole American people. Mr. Cushing stigmatizes his conduct as it deserved to be stigmatized. He is fierce and bitter, even vindictive, but not unjust; and it is not 'bad manners' in a man who has just cause for quarrel with another to state the case with force and clearness. Unlike Sir Alexander Cockburn, Mr. Cushing did not seek an official form for his bitter words against the English Arbitrator, and he was not pedantic or frivolous enough to suppose that his opinions of this particular Englishman would have

any influence upon the course of the treaty. Mr. Cushing, more than any other American, had framed the treaty. For years he has been the power behind every administration, and since Pierce's day he has virtually directed the foreign policy of the United States. Buchanan, Lincoln, Johnson, and Grant all had occasion to consult him, and even Secretary Seward, strong as he was in the management of the State Department, paid great deference to Cushing's judgment and relied to a great extent upon his knowledge of international law. Constantly dealing with questions of the greatest magnitude, while living almost as a hermit, his hand was felt in nearly every important public question, though seldom seen by any except those brought in immediate contact with him. No one knows so much about the Treaty of Washington and American diplomacy generally as Caleb Cushing, and the thrusts at the honor of the American Government and American Counsel at Geneva which the Lord Chief Justice chose to include among his 'reasons' for dissenting from the award could not fail to be keenly felt by Mr. Cushing. Bad manners, the charge which our pedantic contemporaries bring against Mr. Cushing, is Mr. Cushing's charge against the Lord Chief Justice, though it is rendered still more bitter by the imputation of a muddled intellect."

The Philadelphia *Press* spoke of Cushing's "powerful and as yet wholly unanswered volume," and several Washington editors praised the work unreservedly. It received also the unqualified commendation of Charles Francis Adams. *Harper's Weekly* showed a caricature of Sir Alexander Cockburn, in wig and gown, with spectacles thrown back upon his forehead, reading Cushing's characterization of him:

"Neither the original constitution of his mind, nor the studies, pursuits, or habits of his life, had fitted him for calm, impartial, judicial examination of great questions of public law. The same traits of confused thought, equivocation in matters of law, tendency to declamatory denunciation of adversary opinion . . . reappeared in more vivid colors at Geneva."

Cartoons of this kind doubtless brought a smile in official Washington, but in the British Isles, the hilarity was less obvious. Sir Alexander Cockburn, like a spoiled child of the law, had returned to the bench with a poorly-disguised grievance. As early as November 4, 1872, at a public banquet in London, he had, with wretched taste, vehemently denounced the decision of the Geneva Tribunal. Lord Granville's biographer admits that Cockburn's "Dissenting Opinion," — which had been printed and extensively circulated in England, — was "far more widely read than the judgment of the Arbitrators." Thus, when Cushing's book appeared, administering in retaliation a kind of figurative slap in the face to the Lord Chief Justice, Cockburn's adherents, — and they were many in the upper circles of British society, — were unrestrained in their rage. *Fun*, for instance, printed a popular drawing showing Cushing, as a fishwife and wearing a gown of stars and stripes, railing at the respectable wearer of the ermine, the caption beneath reading "Where are the police?" The *Daily News* contented itself by saying:

> "The *Alabama* has not left on either side a sentiment of such exuberant friendship and sunny satisfaction that we can afford to rake over the dying embers of the quarrel in Mr. Cushing's vigorous fashion."

Other papers were not so discreet, and it was feared in some quarters that the whole question might be re-opened. Fortunately, however, the two governments paid no attention whatever to the controversy, which, after its first heat, gradually subsided, and finally grew cold.

Caleb Cushing was far too old a hand to lose any sleep over either praise or blame. Long before his book

was on sale, he had turned to other avocations. In February, he and Evarts had several conferences in New York on matters of law. On April 12, 1873, he wrote George William Curtis:

"When I returned from Europe last autumn, it was my intention to devote myself to literary pursuits, as in the days of my youth, but importunate clients and tempting fees turned me from my general purpose, although not so completely as to prevent my finding time to write the *Treaty of Washington*. But I am struggling hopefully to be free for the society of my books and the use of my pen, encouraged to this effort by inviting offers from publishers.

Meanwhile I must experiment on the public ear with two or three scraps of verse from my portfolio, at the risk of being laughed at for my pains.

To this end will you, *when you are perfectly well*, and resume your editorial duties, kindly allow me to lay some of these things before you to see whether they would be admissible to your Weekly?"

As events turned out, Cushing was never to have the leisure that he so earnestly desired. Caught in the net of public responsibility, he could not escape being called upon to serve, and he was to keep in harness almost till the end.

The last scene of this "strange, eventful history" of the Geneva Tribunal took place on September 9, 1873, more than a decade after the *Alabama* began her depredations. On that morning Sir Edward Thornton, the British Ambassador, and Mr. Edward M. Archibald, British Consul General at New York, called at the Department of State. As the first-named gentleman sat down, he remarked, "I believe my government owes the United States a sum of money, which it is my purpose to pay to-day." Drawing from his broadcloth coat a Russian leather pocket-book, he added, "If you will

please give me a pen and ink, I will soon settle this little outstanding indebtedness." Secretary Fish then gave his receipt for $15,500,000, and the momentous international episode was closed. The check in payment of the *Alabama* still hangs framed on the walls of Downing Street, a striking lesson to every Anglo-Saxon that "Peace hath her victories no less renowned than War."

As soon as this interesting ceremony was completed, a Washington correspondent hastened to seek an interview from Caleb Cushing, who was still in the capital. While reluctant to have himself quoted again in the public press, the veteran diplomatist finally made a brief statement, congratulating the two nations on the settlement. It was eminently fitting that Caleb Cushing should have a word to say at that time. Although his unremitting efforts to secure an amicable conclusion may not then have been universally known, official Washington saw in the verdict of the Geneva Tribunal a personal triumph for the venerable statesman. Bancroft Davis wrote Fish, June 24, 1872, in the period when the negotiations seemed to be at a standstill:

"In all these different matters I have uniformly found in General Cushing a friendly, prudent, considerate, and safe adviser, never obtruding advice when it might annoy or perplex me, but always ready to assume responsibility when necessary; and animated only by a patriotic desire to maintain the honor of his country. I do not, in saying this, mean to be understood as discriminating against the other gentlemen, who need no certificate from me. I have been impelled to say this of General Cushing because, as the Dean of the Board of Counsel, he has been the medium through which I have held official communication with them, and, in speaking, speaks for them as well as for himself."

Caleb Cushing, in fact, had instigated and arranged the conferences which resulted in the Treaty of Washington;

he had made important contributions to the American "Case"; he had assisted Davis in adjusting the perilous dispute over the "indirect" claims; he had helped to prepare the American "Counter-Case" and "Argument"; he had presented before the Arbitrators the brilliant "Reply Argument," in refutation of Sir Roundell Palmer. Beyond all this, moreover, he had been the constant and valued adviser of his Government on almost every matter of procedure or policy connected with the controversy. His name will always be honorably connected with the solution of the *Alabama* claims.

CHAPTER SEVENTEEN

THE CLOSING YEARS, — THE MINISTRY TO SPAIN

"I know the night is near at hand.
The mists lie low on hill and bay.
The autumn leaves are dewless, dry;
But I have had the day."

WHILE the excitement caused by the controversy between Lord Cockburn and Caleb Cushing was subsiding, the latter again established himself in Washington, where he took up his interrupted law practice and resumed his functions as unofficial and confidential adviser to the Department of State. In Geneva, he had heard the news of that strange presidential contest in which Horace Greeley, the Republican war-horse and life-long abolitionist, had allowed himself to be named on the Democratic ticket, and was running against Grant, the regular Republican nominee. Cushing's sympathies being wholly with Grant, he was pleased to be back in America in season to visit his legal residence, — which was then at Falls Church, Virginia, — and to cast a Republican ballot in November, 1872. Grant, as we know, was elected by a large majority both of popular and electoral votes, under which poor Greeley was overwhelmed. Cushing was at the capital on March 4, 1873, and was among the first to offer Grant his congratulations. Within a few weeks, the two were on their old intimate terms, chatting together almost daily on the problems of the administration.

Cushing had returned to his sunny office in the building assigned to the Mexican Claims Commission, where he was apparently oblivious to political matters and devoted to the interests of his clients. He had far more legal business than he could possibly attend to, but that did not prevent him from considering certain literary projects which he had in mind. He was urged by Thomas B. Connery to write some editorials for the New York *Herald,* and did, indeed, agree to do so; but at Christmas he was obliged to send him the following letter:

"I cannot express to you how much grief and pain I have experienced in finding myself unable to comply at this time with your kind wishes, and fulfill my promise on that behalf. It has not, I assure you, been from want of inclination, but because of the physical impossibility during the last two months of attending to anything, except the task which every succeeding hour of the day has forced upon me and which has left me no capacity for voluntary action. I conceive that the special duties of the conductor of a great journal are incessant and urgent beyond description; but they cannot be more so than those, whether official or personal, which have developed upon me since the close of September. It was otherwise during the summer months, during the long comparative inactivity of the Government and the Courts, when I had much leisure for writing; and, when I conferred with you, I had fondly hoped that it might so continue during the months of October and November. But my anticipations in that respect have proved to be illusory, and the disappointment has been greater to me than it could possibly be to you, for I felt honored by your invitation. Meanwhile I have been happy to communicate with Mr. Preston in the evening whenever he saw fit to call. For the rest, I have in the first place earnestly to beg your pardon, and in the second place to utter the hope that in other circumstances the opportunity may be afforded me of manifesting the respect and consideration which I have for you."

The excessive labors to which Cushing refers were connected with the *Virginius* affair, which, almost overnight, turned the calm of a Washington autumn into an ominous tempest. The Cuban rebellion mentioned in an earlier chapter was still going on, although in a languid and unimpressive fashion. Grant, who in 1869 had been persuaded by General Rawlins that the insurgents ought to be recognized, had, after Rawlins's death in September of that year, changed his attitude, and was now allowing himself to be advised by Fish and Cushing, who were distrustful of the rebel leaders. On the last day of October, 1873, the *Virginius*, flying the American flag, but carrying from Jamaica a cargo of war material and many passengers on their way to join the insurgent army in Cuba, was captured by a Spanish vessel, the *Tornado*, and piloted into Santiago harbor, where fifty-three of the passengers and crew were court-martialed and shot, among them being eight citizens of the United States. Castelar, the high-minded and liberal President of the Spanish Republic, sent an order, as soon as the news of the capture reached him, forbidding any executions of non-combatants without the sanction of the home government, but his instructions arrived too late.

There can be no doubt that Castelar deeply and sincerely regretted the precipitate action of the Cuban authorities, and was willing to make prompt and satisfactory amends. Meanwhile, however, agitators in New York City, without troubling to ascertain the facts, called indignation meetings and brought insistent pressure on Fish to take immediate action against Spain. General Daniel E. Sickles,[1] the wounded hero of Gettys-

[1] Daniel E. Sickles, a New York lawyer and later a representative in Congress, acquired notoriety in 1859 for shooting Philip Barton Key, whom he accused of carrying on an intrigue with his wife. He

burg, then our Minister to Spain, proved to be easily excitable, and allowed his ungoverned emotions to lead him into indiscretions. Altogether it looked for a few days as if war were inevitable.

There were, however, cool heads in the Department of State. Secretary Fish, who was never given to precipitate action, perceived at once that there was a reasonable doubt as to whether the *Virginius* was entitled to carry the American flag. Cushing, who, as Attorney General, had had an unpleasant experience with Walker and other notorious filibusterers, was also suspicious; and, when called in for counsel, he recommended that the United States Government, before demanding the surrender of the *Virginius*, make sure of three points, — the right of the *Virginius* to claim the protection of the flag, the place of capture, and the mission on which she was engaged. Later, on November 16, he made a statement of a semi-official character to the New York *Evening Post:*

"No government ever yet went to war through the misconduct of its subordinates; and Spain will make satisfactory reparation for the conduct of her officers in Cuba. The people of this country are running stark mad because a few filibusterers, who have forfeited their rights to the protection of the United States by their conduct, have been shot. It would be better for the country if other filibusterers were served the same way. A declaration of war may be popular, but it does not follow that it will be either just, or essential to the vindication of our national honor. . . . From all the information in my possession, I do not believe our friendly relations with Spain will be severed by means of the *Virginius* affair."

Sumner also saw the folly of rushing blindly into war

fought gallantly through the Civil War, taking part in many battles and losing a leg at Gettysburg. He was a hot-tempered man, of great courage and audacity.

with Spain, and sent to a mass meeting in New York an eloquent appeal for fair play. Cushing, after reading Sumner's letter, wrote him:

"I am delighted to learn through the newspapers that you continue to have the courage of your convictions, and do not cease to be yourself because of the insanity which infects the citizens of New York on the subject of Cuba."

Meanwhile General Sickles in Madrid had become almost hysterical in his eagerness to rush matters to a decisive issue, and, at Cushing's suggestion, the negotiations were transferred to Washington, where Secretary Fish and Admiral Polo, the Spanish Ambassador, soon reached an understanding creditable to both parties in the dispute. The *Virginius* survivors were to be sent back with the ship itself to the United States, and Spain was to institute proceedings against any of her officials who had violated her laws. Spain also agreed to salute the American flag on the following Christmas Day, — unless she could, in the interval, prove that the *Virginius* was illegally carrying the stars and stripes. The conclusion of the affair was in the nature of an anti-climax: the *Virginius*, on her voyage to New York, foundered in a heavy storm off Cape Fear; and Attorney General Williams ruled, after an investigation of the documents, that she had been sailing under papers which had been obtained by perjury, and had, therefore, no right whatever to be considered an American vessel. It was manifest that the popular clamor for vengeance on the Spanish Government had been unjustified, and that Fish, Sumner, and Cushing had kept us from what would have been a most regrettable war.

The bellicose Sickles tendered his resignation, which was immediately accepted. Then the President, with-

out consulting even with Fish, sent for Caleb Cushing on the morning of December 27, and asked him, as a personal favor, to take the Mission to Spain. Cushing was honestly reluctant to accept: his private law practice was in a state where it required his attention; he desired above all things to have leisure for literary work; and he was well beyond three-score and ten, at an age when most men never dream of adding to their responsibilities. But Caleb Cushing had never evaded an obvious duty. He yielded to Grant's appeal, in the manner of Browning's *Prospice:*

> "I was ever a fighter, so — one fight more,
> The best and the last!"

Cushing was quickly approved by the Senate as Minister to Spain and began packing his trunks; but before he could leave, he had to face the bitterest disappointment of his career. If there was any one place more than another which he really coveted, it was that of Chief Justice of the Supreme Court of the United States. There had been moments, moreover, when the prize seemed within his grasp. When it was thought in 1859 and 1860 that Chief Justice Taney was soon to die, Cushing was mentioned everywhere as his probable successor. The New York *Daily News* said, November 28, 1860, in an editorial:

"Mr. Cushing has intellectual fitness for the post which no man can deny. His career upon the bench of the Supreme Court of Massachusetts, which he left to take a seat in the cabinet of President Pierce, attests not only the wonderful faculties of his mind in the analysis and clear presentation of complicated facts, but his patience and urbanity to all who appear before him to aid in the administration of justice. . . . Since Mr. Cushing's retirement from the cabinet of President Pierce, we do not think any person has done more than he for

constitutional law in the United States. His speeches in the Legislature of Massachusetts, his arguments before the Supreme Court, and his various discourses elsewhere have done much to inculcate correct notions of the powers to be held and the duties to be performed by the States and the United States respectively."

Taney, however, lived on until 1864, when Cushing, of course, was not considered for the vacant place. The death of Chief Justice Salmon P. Chase, who had been Taney's successor, occurred on May 7, 1873, and Grant was left with the responsibility of filling the position. By early November, after an unnecessarily long delay, he had resolved to offer the appointment to the flamboyant Roscoe Conkling, of New York: but Conkling preferred to remain in the Senate, where his influence, at the moment, was paramount. Grant then rather hastily named his Attorney General, George H. Williams, of Oregon, a mediocre and even incompetent lawyer, for whom there were few to say a favorable word. It was soon evident that the Senate would reject Williams, and his nomination was quietly withdrawn.

At two o'clock on the afternoon of Friday, January 9, immediately after the noon cabinet meeting, General Orville E. Babcock, Grant's private secretary, entered the Senate Chamber bearing what was evidently an official communication. He was intercepted in the aisle by Conkling, who, with characteristic self-assurance, seized the document, glanced rapidly over its contents, and then exclaimed, in a voice loud enough to be heard several feet away, the words, "Chief Justice!" Other senators rushed up to him, and soon the name "Caleb Cushing" was buzzing from ear to ear. Thurman and Conkling remained in animated conversation for some time near their desks; in a corner, Sumner and Boutwell, of Massachusetts, had their heads together; the unusual hum of

talk indicated a mild sensation in the hall. The appointment was evidently quite unexpected to the Republican leaders, but no one had any thought that it would not be confirmed, perhaps that very afternoon. The cabinet had seen no ground whatever for opposition, and the Judiciary Committee, without discussion or comment, recommended approval.

The first reaction from the press of the country was favorable. The New York *Herald* said on January 10:

> "The exchange of Williams for Cushing is such a sudden mounting from the preposterous to the respectable, that our first impulse is to offer exultant congratulations on this nomination, which will probably be confirmed."

The New York *World* of the same morning had a long editorial, in part as follows:

> "Mr. Cushing will go upon the bench without any stubborn bias for or against any of the schools of constitutional interpretation, and Democratic counsel will be listened to with the same candor as their opponents. This is really the first appointment of a Chief Justice that has ever been made from which it could safely be predicted that neither political party was likely to derive an advantage. We have no doubt that all Mr. Cushing's decisions will be made with an eye single to strict justice between suitors and his own reputation as a jurist."

The *National Republican*, on January 12, printed two columns of newspaper comment, nearly all of which had as a keynote the opinion of the Philadelphia *Telegraph*, — that Cushing was "a worthy successor of the best men that have adorned the position."

Indeed, if merit and achievement alone had determined the matter, Caleb Cushing must have been approved unanimously, for he had, in 1874, no superior in this country in knowledge of the law, in capacity for

sound judicial decision, in dignified bearing, and in firmness and cool reasoning ability. He had not lived his long and eventful life, however, without making enemies, who were eager to compass his downfall; and Grant had also his opponents, who could not neglect an opportunity to embarrass the administration. Over the following Sunday, this opposition gradually crystallized, until it became formidable. The leading organ of the group was Harlan's Washington *Chronicle*, which, with some motive not now altogether clear, became the leader in a daring and utterly unscrupulous campaign against Cushing's confirmation. The issue of the *Chronicle* for Sunday contained a summary of adverse newspaper comment, with glaring headlines, such as AN IMPULSIVE AND RATHER IMPETUOUS TEMPER, LOST HIS SELF-COMMAND AT CHARLESTON, NOT A FIT MAN FOR CHIEF JUSTICE, OPPOSED TO EVERY REPUBLICAN ADMINISTRATION. On Monday the attack, gathering momentum, was still more violent. Cushing was condemned on the scores of age, reputation, and temperament. His whole record had been scrutinized with microscopic care. His pre-war utterances on slavery were resurrected from journals which were yellow with time and had long been stored in garrets. Ancient slanders were revived, and new ones imagined. There are few instances in American history of a newspaper's pursuing a victim with such persistent malignity.

Nothing, indeed, could have been more vile than the methods of the *Chronicle*. It hesitated at no falsehood or perversion of fact. On Wednesday morning it printed a letter alleging that Captain Plummer, of the brig *James Gray*, belonging to Caleb Cushing and his two brothers, John and William, had, at the time of the firing on Fort Sumter, been anchored in Charleston Harbor, and had

hung aloft the Confederate "palmetto flag," under the orders of Caleb Cushing himself, who was then in Charleston; that thus "the first secession flag hoisted upon an American vessel was ordered hoisted by Caleb Cushing"; and that the ladies of Charleston, as a reward for Cushing's sympathy with the Confederacy, took up a purse and presented him with a small silver model of the vessel. The facts in the case were easy to ascertain. Plummer had, it is true, raised the "palmetto flag," but only under compulsion from the vigilance committee of Charleston; Caleb Cushing was not in Charleston at the time, and publicly disclaimed the act as soon as he heard of it; and he was never given a present of any kind by the ladies of Charleston, or by any other Confederate or group of Confederates. Such lies can, of course, be readily disproved, but the impression which they make is not quickly dispersed and they often do irreparable harm. The story would be highly amusing if it were not for the vindictiveness behind it.

In reply to these malicious falsehoods, Cushing's friends could prove that Caleb Cushing had voted for Lincoln in 1864, and for Grant in 1868 and 1872, and had contributed $500 to the Republican campaign fund in the election just closed; that he had been consulted by Sumner and Stevens with regard to the Fourteenth Amendment and had actually made certain alterations in its phraseology before it was enacted by Congress in June, 1868; that he had continued, from the commencement of Lincoln's Presidency, "in constant and hearty affiliation with the Republican Party, and with that alone"; and that, to quote his own words, he had long been convinced "that emancipation of the slaves and their admission to political and civil rights, were necessary measures of justice and essential to the well-being of the Union."

He had, furthermore, on two signal occasions argued forcefully in the courts for the carrying-out of the so-called Enforcement Act. In regularity of record since 1861, not one of his critics could surpass Cushing. This is illustrated by a letter which he received on January 10, from Dr. A. Y. P. Gannett, his Washington physician, reading in part as follows:

"No one I presume is more familiar with your political views, or indeed private history since the close of the war, than myself. Holding the dual position of family physician and a long-tried friend, I am certainly able to speak *ex cathedra* upon this point, and entertain too lively a recollection of the many severe thrusts you have given me in our private discussions upon such topics, to misplace you in your political associations during the past seven years.

I have not forgotten how earnestly you advised the adoption of and practical acquiescence in the provisions of the fourteenth amendment to the Constitution by our people of the South, how you urged me to commend such a course to my kinsmen, Messrs. Wise and Hunter of Virginia, as the safest and most speedy means of extricating the Southern States from greater disasters. You argued with prophetic sagacity that the fifteenth and sixteenth amendments would follow in regular sequence and that it was the duty of the South to accept these as the results of the war; in all of which, much to my annoyance, you were in full accord with the policy of the administration of President Grant, and advocated many other measures equally obnoxious to me."

Meanwhile Washington gossip was busy discussing Cushing's chances of confirmation. It was reported on the morning of Monday, the 12th, that, while the Democratic senators were almost unanimous for approval, the Republicans were divided. There were many who sat in silence, determined in their hearts to kill the nomination if possible; on the other hand, certain influential senators, like Conkling, Edmunds, Thurman, and Sum-

ner, all of whom knew Cushing intimately, were openly favorable. Sumner wrote Francis W. Bird, on January 15:

"I should never have nominated or recommended Cushing as Chief Justice; but I was called upon to consider, his name being before the Senate, if I could vote for his rejection. Now, I know him well, having seen him for the last ten years constantly; and I know his position upon questions in which I am deeply interested. I trust him absolutely, and believe, if the occasion had occurred, he would have vindicated our ideas judicially far better than any probable nominee of Grant. I do not write in the dark, for I have talked with him on these questions and have seen his sympathy with me. You know that I do not cherish old differences and animosities. How many have I seen advanced to the front who were once bitterly the other way. Knowing Cushing as I did, would it not have been mean and craven for me to turn against him, or to skulk in silence? This is not my way with friends. Such is not my idea of friendship."

Boutwell, the other Massachusetts Senator, was equally ready to vouch for Cushing's loyalty to the Republican Party. Even the Boston *Advertiser*, the leading Republican journal of New England, came to his defense. A body of colored citizens of Massachusetts sent a telegram urging the Senate to approve Caleb Cushing. The shrewd and aggressive General Benjamin F. Butler, then in the lower House, neglected no means of securing a quick confirmation of Cushing's name.

Events in the meantime were moving towards a crisis. On Tuesday morning, a caucus of Republican Senators was called to agree upon some definite course of action. At this time, Edmunds and Conkling spoke for Cushing, in strong speeches, and Boutwell, after reviewing his record, urged that the appointment be approved without delay. It seemed best, however, to take no vote at that

time. In the afternoon an incident happened which decided the issue. Cushing's opponents, as we have seen, had been combing his career in the hope of discovering some flagrant error of omission or commission. Subordinates had been instructed to search the rebel archives, then stored in the old Ford Theatre Building, in the hope that something incriminating might be discovered. As the story goes, — and it is substantiated by the best evidence, — a clerk in the Surgeon-General's Bureau came across in these Confederate documents a letter written in March, 1861, to Jefferson Davis. Realizing the importance of this note, he took it at once to Secretary Belknap, by whom, on that memorable Tuesday, it was shown to the President. In some way, — it is said by an anonymous letter, — the news of this Cushing note reached the ears of Senator Aaron Augustus Sargent, of California, who proceeded immediately to the office of the Secretary of War, where, by the exercise of his senatorial privilege, he secured a copy of the letter. Rumor soon spread through the Capitol that Caleb Cushing's "goose was cooked." The *Chronicle* within a few hours published what purported to be an authentic version of the letter, as follows:

Washington, March 21, 1861

Hon. Jefferson Davis:
My dear Friend:

The bearer of this letter, Archibald Roane, has had seven years' experience in the Ordnance Department at Washington, and has been an efficient officer. He has been a contributor to *De Bow's Review*, where he has discussed the complications and causes which have resulted in the destruction of the American Union, and now leaves here for the Southern Confederacy, through loyalty to the South. I think you will find him of special service to you.

Your friend,

Caleb Cushing

As a matter of fact, this was an impudent and shameless forgery. Caleb Cushing never in his life wrote a letter beginning "My dear Friend"; the man's name was "Rowan," not "Roane," and he had never been in the army and knew nothing about ordnance or warfare. The true Cushing letter, as read before the Senate by Sargent, was quite different in wording and spirit:

Washington, March 20, 1861

Dear Sir:

Mr. Archibald Rowan, for the last six or seven years a clerk in the Attorney General's office, desires from me a letter of introduction to you, and he desires it not in view of anticipation of administrative favors, but that he may have the honor of your personal intercourse. Of this, I take pleasure in assuring you, he is eminently worthy. A Southern man by birth, family, and affection, he has carefully studied and ably discussed in Mr. De Bow's *Review* and other Southern works the lamentable events which have been gradually undermining and have at length overthrown the American Union. Whilst a practical man, he is also a ripe and accomplished scholar, with predominating literary tastes and habits. In the discharge of his official duties he has combined in a singular degree the purest integrity and most enlightened intelligence with modest contentment in his lot. Having more than once declined offices of more conspicuous employment in the public service, he now resigns his present office from sentiments of devotion to that which alone he can feel to be his country, the Confederate States, from one of which (Texas) he was appointed. I most heartily commend him as a gentleman and a man to your confidence and esteem, and I am, with the highest consideration,

Your obedient servant,

C. Cushing

In this genuine form,[1] — the authenticity of which is

[1] Even such an authority as James Ford Rhodes has evidently used this forged version of the Cushing letter. In Volume VII, Page 27, of his *History*, Mr. Rhodes speaks of Cushing's recommending to his

confirmed by the copy in Cushing's own files, — the letter was no incendiary document. On March 20, 1861, there was no war between North and South. Cushing had merely sent a rather commonplace and altogether conventional note recommending a faithful public servant to a man who, for years, had been his associate in politics and society. It was without a vestige of treasonable sentiment or disloyalty. As the *World* put the matter:

> "Mr. Cushing's great disqualification for the Chief Justiceship is discovered to be an act of humanity to a poor peaceful young man who had faithfully served him as a clerk."

Senator Sargent, however, was bent not upon justice, but upon revenge.[1] Having secured his copy of the fatal document, he spread the information among his friends at the Capitol; and, on the morning of Wednesday, with a solemnity which would have been ridiculous had it not been for its effect upon Cushing's hopes, he read it in the Republican caucus. The result was evident at once. No vote was taken, but a kind of tacit agreement was reached that no further steps towards confirmation would be instituted. Senator Brownlow, in the

---

"dear friend" a renegade civil servant. Cushing, of course, used no such phrases. The words "dear friend" are found only in the salutation of the garbled version in the *Chronicle*.

[1] Sargent was a former Newburyport lad, who had been employed in a printing office in that town. For some reason, never fully explained, he cherished against Cushing, who was working in the same office, an undying animosity; indeed, he was practically driven from Newburyport because of a scurrilous article about Cushing which he wrote and which was resented by Cushing's friends. Sargent had emigrated to California in 1849, was elected to Congress, and became, in 1873, a United States Senator. His only achievement at Washington was the satisfaction of his desire to be revenged on Caleb Cushing.

midst of silence, moved that the caucus be adjourned, and the members strolled quietly out into the corridors about their business.

Within a few minutes Cushing was informed of the result, and he was altogether too much of a gentleman to allow the President to be embarrassed by the situation. He hastily drafted a letter, which reached Grant about eleven o'clock that morning and read as follows:

"Animated by the sense of personal gratitude for the honor you have done me in nominating me to the high office of Chief Justice of the Supreme Court of the United States, and perceiving that the continuance of my name before the Senate may be the cause or occasion of inconvenience to yourself or your political friends, I respectfully request you to withdraw the nomination.

Permit me to add, that the charges of disloyalty to the Union and the Constitution which have been brought against me in this connection, are utterly destitute of foundation in truth or in fact. I indignantly repel the imputation. In all the time anterior to the commencement of hostilities in the Southern States, every act of my political life, in whatever relation to parties, was governed by the single dominant purpose of aiming to preserve the threatened integrity of the Union, and to avert from my country the calamity of its disruption and of consequent fratricidal carnage. How could such a purpose be promoted otherwise than by political association or personal intercourse with citizens of different states, including those of states professedly disaffected to the Union? Should the only possible means of laboring to prevent Civil War be stigmatized as disloyalty to the Constitution? But immediately on occurrence of the first act of hostility to the Union being struck in the State of South Carolina, I took my stand with the Union and its government; I publicly announced my adhesion to them in the most unequivocal terms; I tendered my services to the government in the field, or in any other way which might testify my fidelity to it; and I have continued from that day to this, as well in official or unofficial action, to tread in the path of unswerving devotion to the Union, whether during the actual

progress of hostilities against it, or in the subsequent events of reconstruction and of the successive amendments of the Constitution rendered necessary by the changed conditions and relations of the several states of the United States and of their respective inhabitants. The recent amendments of the Constitution, each and all of them as they were in turn adopted, and the legislative acts for their enforcement and for accomplishing reconstruction had my coöperation and adhesion, and I have supported them constantly, — if not in political debate, for which my comparatively retired habits of life afforded neither occasion or opportunity, — yet in legal opinions or in the courts, and in counsel or discussion with officers of the Government, members of Congress, and private persons, I entertaining the same genuine respect for these amendments as for the other provisions of the Constitution, and also rendering the special observance due to them as the just and necessary incidents of the reconstruction of the Union.

While my nomination was undergoing consideration in the Senate, it would have been unbecoming for me to speak in explanation of my acts or opinions; but now, with relative indifference to whatever may have been said either honestly or maliciously to my prejudices, it belongs to my sense of public duty, and it is my right, to reaffirm and declare that I have never, in the long course of a not inactive life, done an act, uttered a word, or conceived a thought, of disloyalty to the Constitution or the Union."

Meanwhile the President had reluctantly decided that he must withdraw Cushing's name and had actually drafted a letter to that effect when Cushing's communication was handed to him. Grant asked the messenger to wait a moment, sat down and read Cushing's note, and then added a postscript to his own communication to the Senate. The letter of withdrawal in the form in which it reached the capitol read as follows:

"Executive Mansion
Washington, Jan. 14, 1874

To the Senate of the United States:

Since the nomination of Caleb Cushing, of Virginia, to be Chief Justice of the Supreme Court of the United States, information has reached me which induces me to withdraw his nomination for the highest judicial office in the government, and I do, therefore, hereby withdraw the nomination.

P.S. — After signing the above withdrawal, I received from Caleb Cushing, whose nomination it is proper to say was made without his knowledge, a letter requesting the withdrawal of his name, a copy of which is herewith attached.

(Signed)
U. S. GRANT"

So, for all practical purposes, the incident closed. The Washington *Chronicle* headed its columns on January 14 with the words "Good-by, Caleb," and published a sneering poem called *The Ballad of Dr. Faustus,* in which Cushing was portrayed as driving a bargain with Mephistopheles. A few vile sheets said a last word of calumny about the old man of seventy-four. Here and there, also, a newspaper told the truth about the withdrawal. One account concluded:

"It was the record that did the work. Rolling back the wheels of time thirteen years, they found Mr. Cushing a State Rights Democrat, and a correspondent of Jeff Davis. That method of procedure would have prevented the confirmation of Peter and Paul as Apostles, had they come before the American Senate. . . . It would take the stars from the shoulders of Sherman, and the title of Excellency from John A. Dix. . . . When this flurry and frenzy has subsided, it will be seen that the office in this controversy has lost rather than the man. It is the judiciary that will receive the most injury. Mr. Cushing, with the knowledge that he retains the respect of the elder, and the love of the younger members of his profession; with the

conviction that of the trusts that have been crowded upon him none have been unworthily performed; with the memory that those Republican Senators who are likely to have any place in history were his defenders and advocates, can smile at the empty robes which a partisan hue and cry has kept from falling into his possession, and can proudly say,

> 'More true joy Marcellus, exiled, feels,
> Than Caesar with a Senate at his heels.'"

Sincere and honest praise of this kind, gratifying as it would ordinarily have been to Caleb Cushing, was no solace to him now. More than thirty years before, he had been rejected by the Senate for a cabinet position; now he was again the victim of partisan bigotry, and even his stout nature began to yield under this last blow. He gave no public expression of his disappointment; he continued in the path of duty as if indifferent to what had been and was being said of him; but those who knew him best could see that he would never again be quite the same man. It was the most conspicuous case in our history of a rejection for high office on purely partisan grounds. Certainly Caleb Cushing would have been a not unworthy successor to Marshall, Taney, and Chase. Yet he had to be a spectator while Morrison R. Waite, his recent colleague at Geneva, was nominated by Grant and quickly approved, — a man deserving of respect, but far from Cushing's equal in the qualities for which we expect a Chief Justice to be distinguished.

It is the little as well as the big things that frequently catch the ear of the people, and Caleb Cushing found himself at about this time the hero of a rather ludicrous affair which attracted the attention of the newspapers. He lived in Washington in a house on H Street, next to that of his friend, General Butler. Directly opposite, on the corner of 14th and H Streets, was the home of

Fernando Wood, of New York, then occupied temporarily by a man named Kelly, who owned a "fawn-colored, long-haired dog," which kept up a continuous barking, both day and night, behind an iron fence. This yelping, which was "of a harsh kind, falling upon the ear like a blow," so annoyed Cushing that he finally had Kelly brought before the Police Court, on the charge of maintaining a nuisance. The case was tried in July, 1873, and Cushing appeared in person before the police magistrate to testify that the barking had deprived him of his sleep by night and hindered him from studying and transacting his lawful business by day, and had so prostrated him that he had to call in a physician. This evidence was supported by that of other neighbors of Kelly, and the defendant was instructed to kill or remove the dog and to deposit twenty-five dollars as collateral to ensure the abatement of the nuisance.

In itself, of course, this was a trivial case, but it gave the press an opportunity for persiflage. The Germantown *Daily Chronicle* printed a witty editorial called "A Dog's Delight," beginning:

> "Mr. Caleb Cushing, dissenting from Dr. Watts' advice, is not disposed to let dogs delight to bark and bite. Mr. Cushing takes some pleasure in this pastime himself, as Sir Alexander Cockburn can attest, for 'tis his nature to; but he regards a barking dog with aversion."

Cushing, in reply to this rather clever article, sent a letter which was widely copied in the daily newspapers and cannot be suppressed by his biographer:

> "There is so much both of good sense and of good humor in your article of the 18th, entitled 'A Dog's Delight,' as to induce me to write you a few words on the subject.
>
> I perceive that all the newspapers chronicle my dog fight.

I have thus of a sudden become famous pretty much as Alcibiades did by cutting off his dog's tail, to the astonishment of all Athens.

I plead guilty to barking at Sir Alexander Cockburn; but I have done this in self-defense, and, as it seems to me, with great moderation, seeing that Sir Alexander began by barking at me through 130 pages of close-printed large octavo, whilst I barked at him through only 25 pages of large type leaded, these pages not half the size of the others. You see that I have been very temperate.

In justice to Mr. Fernando Wood also I desire to say that the dog did not belong to him but to the tenant at will, Thomas Kelly, and that, being written to on the subject, Mr. Wood gave me full permission to act in my discretion against both Kelly and his dog."

Harper's Weekly, in a humorous reference to the affair, parodied Goldsmith's famous lines, as follows:

"This dog and Caleb first were friends,
But in a pique, you see,
The dog, to gain his private ends,
Went mad and howled at C.

Around from all the neighboring streets
The wondering people ran,
And swore the dog had lost his wits
In howling at the man.

But soon a wonder came to light
That showed they all were blind;
Cushing recovered from his fright,
And Kelly, — he was fined."

Another editor, apparently more serious, wrote:

"Dog-infested communities all over the country rise to call Mr. Caleb Cushing blessed for pointing out the way to relief from the sleep-destroying nuisance of barking curs."

But the incident of Kelly's dog was, after all, merely one diverting incident in the routine of Cushing's political life. He had said that he was living almost in seclusion, but he was not allowed to remain a private citizen. On February 8, 1874, he received from the Secretary of State his instructions as "Envoy Extraordinary and Minister Plenipotentiary of the United States to the Republic of Spain." His salary was to be at the rate of $12,000 a year, a generous allowance for those days. Fish's letter was accompanied by the usual equipment of Ministers: a set of printed personal instructions, a letter of credentials, a special passport, a list of diplomatic and consular agents, and a letter of credit. Before he left, Cushing received a letter of invitation from the Honorable Warren Currier and others, citizens of Newburyport, to attend a public dinner in that city, but was obliged to decline.

Caleb Cushing sailed on March 19, on board the *St. Laurent*, landing at Havre. He went for a few days to London, where he said to his secretary: "There are two curiosities I should like to see in England. Disraeli is one and the Brighton Aquarium is the other. I have only time to see one. Which would you advise?" He decided finally for the author of *Coningsby*, but no introduction could be arranged in the limited time at his disposal; so he made the trip to Brighton. Then he went to Paris, where he had an interview with his predecessor, General Sickles, and later to Lisbon and Madrid, where, on May 30, he was formally presented to the Spanish President. The American archives, after General Sickles's departure, had been placed in custody of a young *chargé d'affaires*, Alvey Augustus Adee, who was just at the threshold of his long and valuable diplomatic service.

Before leaving Washington, Cushing had had several long conversations with Secretary Fish regarding the proper solution of the *Virginius* affair, and had received from him certain instructions, the last paragraph of which read as follows:

"You are now instructed to make reclamation on the Spanish government for injuries to the crew and passengers of the *Virginius*, by reason of their capture and imprisonment; and more especially to call for indemnity to the families of such of the crew and passengers as were executed at Santiago de Cuba. In doing this, it will not be necessary at the outset to open a discussion in detail of the various particular questions involved in the general question, such as the right of the United States to claim redress for injury done to subjects of Spain, whether innocent or charged with complicity in the insurrection, or with other offenses, or to subjects of Great Britain or other powers, or only for injury done to citizens of the United States. All these particular questions, as also that of the amount or form of reparation, may be left by you for consideration until after response shall have been made by the Spanish government to the general demand for reparation in the premises. It will be in season then to judge how far the United States will go in a claim of indemnity of this nature as to persons, and in reference to a vessel of the character of the *Virginius*."

At work of this kind, Caleb Cushing was an old hand, knowing exactly when to be firm and when to be lenient. On June 26 he sent to Ulloa, the Spanish Minister of State, a letter outlining the American grievances and demands, and the habitual exchange of notes ensued, the Spaniards, in their usual procrastinating way, showing a tendency to postpone a definite answer. Cushing kept Fish informed of every detail of the negotiations, and, on August 21, drew from him this order:

"You will, on proper occasion, express to the government of Spain the strong feeling of this government, that the question so

fully presented by you should be considered without delay, and that ample reparation, now too long deferred, should be promptly furnished."

The slowness of the government, however, was not accelerated, and began to grow annoying even to Cushing, who was familiar with all the peculiarities of the Spanish temperament. On October 27, after more than two months of patience, Fish authorized Cushing to take an even stronger stand:

"You are . . . instructed to press the reclamation of the United States upon the government of Spain firmly and plainly, and to represent that the delay in according to this Government what has been too long withheld is deemed a serious menace to the continued good relations of the two countries."

This was emphatic language, but it was the only kind to which Spanish diplomacy of that day would respond. By dint of steady pressure, Cushing was finally able to report, on December 4, that Ulloa had agreed to indemnify the United States on the same basis as that already accorded to Great Britain. The last step was the conclusion, on February 16, 1875, of a diplomatic convention by the terms of which Spain paid the sum of $80,000 to the United States, to be distributed among the families of those Americans who lost their lives through the criminal conduct of the Cuban officials.

Meanwhile Spain had been torn by civil strife. Castelar had resigned as President on January 2, 1874, before Cushing arrived, and had been succeeded by General Serrano, who held the executive power for somewhat more than a year, struggling desperately against the Carlists. Early in 1875, however, Alphonso, son of Isabella II, landed in Spain, seized the throne, and was crowned Alphonso XII. Cushing promptly presented his

credentials to the royal government, and on the following day, March 11, 1875, the ratification of the convention with the United States was signed, King Alphonso being eager to retain the good-will of our country. So closed a passage in our diplomatic history altogether creditable to our forbearance and sense of justice to others.

Life at Madrid in those days was certainly stirring enough, even for a mere spectator. Through the year 1874 and 1875 battles were going on regularly between the regular government and the Carlists, and Madrid was filled with fugitive and wounded soldiers. The insurrection in Cuba still continued as an embarrassment to the parent nation. The Spanish treasury was almost empty, and would remain so until the people could be sure of some form of stable government. Amid all this excitement Caleb Cushing went his way, amused and horrified by turns. He found himself a popular figure with both the republican administration and the royal court which superseded it. His interest in Spanish literature and history, always keen, received a new stimulus when he had an opportunity for resuming scholarly researches abandoned thirty-five years before. It happened, moreover, that there were in Madrid at that time several notable representatives of foreign states. First among them, probably, was the British Ambassador, Sir Henry Layard, the famous explorer of Nineveh, an indefatigable student and a man of wide experience. The minister from Germany was the suave and cynical Count Paul Hatzfeld, and from France, Count Chaudordy. With these and other diplomats Cushing was naturally much thrown. His first Christmas in Spain, for instance, was spent at the home of Sir Henry Layard, who, in spite of his aggressiveness and arrogance, proved most hospitable.

In return, Cushing, for almost the first time in his life,

gave a series of formal dinners. With his usual precision, he arranged himself for the seating of his guests, and preserved the drawings which he made for this purpose, — drawings which indicate that he gave the matter of precedence and courtesy a great deal of thought. On these occasions he was an admirable host, a good listener as well as a good talker; and his wines were said to be capital. Under the circumstances, he was finding his sojourn in Madrid quite delightful. He wrote, September 27, 1875, to his sister-in-law:

"My own health has been uninterruptedly good in Spain. I have not had a headache or even a cold, or any other admonitory ailment.

Engagements of public duty prevent my getting away from Spain, but I hope soon to return, and find a quiet nook to hide away in, near enough to communicate easily with you and John and not so near as to become a bore in my old age.

I have picked up a number of nice things for the girls, Ellen, Elizabeth, and Margaret, some of which I hope soon to have the opportunity of sending home."

In 1876, Cushing's name once more appeared conspicuously in the American newspapers because of his share in the apprehension of the notorious William M. Tweed, the Tammany leader in New York City, who had established a corrupt "Ring" by means of which that municipality had been mulcted of millions of dollars. Not until 1871 did the reform element acquire sufficient strength to be able to institute a series of prosecutions, as a result of which the "Ring" was dispersed and "Boss" Tweed himself was indicted, tried, and sentenced to a prison term. In December, 1875, he escaped from custody and fled to Cuba, where he was first arrested but afterwards released, there being, apparently, no legal means of detaining him there. The American govern-

ment, however, had its agents on Tweed's trail, and, on August 2, Fish sent Cushing the following message in cipher:

"About July first Hall found Tweed under name of Secor at Santiago. Was instructed to inquire confidentially as to his delivery. He telegraphed twenty-third that Jovellar has authority from Madrid and arrangements were concluded to obtain him. He now telegraphs that through treachery Tweed sailed in Spanish vessel *Carmen* for Vigo, July twenty-seventh, and Jovellar had telegraphed to Madrid asking his return. Ascertain secretly and cautiously if he can be returned to Cuba."

Cushing at once had an interview with the Spanish Minister of State, who agreed to comply with the American request; and on August 6, Cushing prepared and sent the following statement to the Madrid Government:

"I now proceed to communicate to your Excellency in detail the matter which I had the honor of stating orally in my interview of yesterday.

William M. Tweed, a citizen of the State of New York, has been convicted by the competent court of malversation of the funds of the city of New York, to the amount of some six or seven millions of dollars.

He escaped from prison, and was lost to sight for some time, but is at length proved to be at Santiago de Cuba. The Governor-General of Cuba, it appears, after consulting the Government at Madrid, resolved to deliver up the fugitive for his return to the United States.

But Tweed again fled, and took passage on the 27th ultimo, on the Spanish merchant vessel *Carmen*, bound to Vigo, in Spain, where he may arrive, say, on the 15th instantis.

Such is the substance of the information transmitted to me by telegram of the Secretary of the United States. He instructed me to request of your Excellency to have Tweed arrested aboard the *Carmen* on her reaching Vigo, kept under safe guard, and sent back to Cuba at the earliest opportunity, there to be placed in the hands of the Governor-General.

There can be no difficulty in identifying Tweed. He is a

man, say fifty years of age, of exceptionally great stature and bulk, with large mouth and other features, especially a most prominent nose. He may have acquired, during the few months of his residence in Cuba, some, but not much, knowledge of the Spanish language. He is probably the only North American, if not the only foreigner, on board the *Carmen;* and, even if he be disguised as a sailor, the rest of the crew and the master will, for their own safety, not allow themselves to be taken for this fugitive from justice."

With this letter, Cushing sent a copy of *Harper's Weekly,* for July 1, containing one of Nast's famous cartoons representing Tweed in convict's stripes. On September 6, when the *Carmen* appeared off Vigo, she was boarded by the Governor of Pontevedra, who at once recognized Tweed from his resemblance to Nast's caricature, and had him seized. There was then no extradition treaty between the United States and Spain, but the Spanish Government yielded to Cushing's request and handed the discomfited "Boss" over to an American man-of-war, which brought him safely and ignominiously back to the city which he had plundered.

In the autumn of 1876, Caleb Cushing returned to the United States, hoping that he might be able to resign and lay down his burden;[1] but Grant and Fish persuaded him to retain his office for a few months more, until the administration was over. He arrived in New York on Tuesday, September 8, and proceeded at once to the capital, where he spent many hours in the rooms of the Department of State. The presidential election early

[1] The death of his half-brother, William Cushing, on October 15, 1875, had been a heavy blow to him. William Cushing, born in 1823, had graduated at Harvard in 1843, and had then, after two years spent in Oregon and the Hawaiian Islands, gone into business in Newburyport. He had been Mayor of Newburyport in 1856, 1857, and 1858, and a Representative to the General Court in 1872.

in November was, as every one knows, in doubt for several weeks. Cushing, of course, voted for Hayes. When the controversy between the Hayes and Tilden followers was at its hottest, Caleb Cushing was harassed by reporters, who desired to get his opinion on the situation. He uniformly maintained that the issues, dangerous though they seemed, would clear themselves, and that the good sense of the American people would find some solution of the problem. In late November he went to Newburyport to greet his old friends and to adjust some business matters. On December 6 he sailed from New York on the *Parthia* for Spain.

When Cushing reached Madrid just before Christmas, 1876, he carried with him the approval of his government to a formal extradition treaty between the United States and Spain. It happened that some Madrid newspapers and opposition politicians had protested against the giving up of Tweed, basing their argument on the point that the Washington Government had not in the past been equally courteous in sending back fugitive Spanish criminals. The new treaty, signed on January 5, 1877, by Caleb Cushing and the Spanish Minister of State, Don Fernando Calderon y Collantes, did away with these criticisms by providing that extradition should be enforced between the two countries in the cases of fourteen crimes known to the common law code, — excluding offenses of a political character.

A week later Cushing arranged with Calderon y Collantes a protocol stipulating that thereafter no American citizen should be tried by a military tribunal, but only in the civil courts. Before he left Madrid, moreover, he had several informal conferences with the Spanish Government on the subject of a revised commercial treaty between the two countries, which would promote amicable

relations between them. It happened that Calderon y Collantes was a man of exceptionally liberal views, disposed to abandon the traditional haughty and aloof policy of Spain in her relations with foreign countries. He and Cushing had many common interests, and found it easy to arrive at an agreement.

Cushing had, on the whole, been fortunate in his ministry. On April 21, 1876, he wrote Sidney Webster:

"I have now been in Spain, working harder than I ever before did in my life, with two subjects of consolation, however: first, the consciousness of performing my duty, and, second, that of enjoying uninterrupted health. My labors, serious enough, would not be unwelcome but for so large a part of my time being necessarily devoted to the interests of less good Spaniards in conflict with better ones, — that is, Cuban Spaniards against Peninsular Spaniards. Meanwhile the progress of events at Washington is to me one of constant sorrow, both as an ominous state of things in itself and because of the deep impression to our discredit which it is beginning to produce in Spain and indeed all over Europe."

When he was back once more in December, he was greeted like a returning prince. A foreign correspondent of the American press wrote:

"When the President (Canovas del Castillo) saw Mr. Cushing, he immediately came up to him and put his arms around him and embraced him most cordially and with great sincerity. The government have great confidence in Mr. Cushing, in his learning, wisdom, and fairness. Probably no foreign minister at the court has the influence which he has. This influence is not confined to the government, but he is held in the highest esteem by the other ministers. They consult him upon difficult questions of international law which may arise. He is an encyclopedia of knowledge, of prodigious memory, and knows the history of Spain better than the Spaniards do. I was proud to see the pre-eminent position which he held above all foreign ministers."

A new phase of his many-sided genius was brought out when he appeared as one of forty Spanish poets who created a stir in Madrid by composing a bouquet of poems in honor of the little daughter of Madame Ratazzi. His popularity in Madrid society was very great, and his approaching departure was regarded everywhere with regret.

On February 15, after a brief attack of illness, Cushing sent to Fish a letter of resignation, in which he said, in part:

> "The two great objects of instruction which induced me to return here having been already accomplished, and a third object conveyed in later instructions being now in hopeful progress, it is my desire, induced by the consideration of personal interests at home, that my successor be appointed and my letter of recall transmitted, not later than the end of March."

Having accomplished this formality, Cushing sailed for America in late February, arriving in Washington in season to greet the new President, Rutherford B. Hayes, and his Secretary of State, William M. Evarts. Cushing's resignation was not accepted until June 11, at which time his ancient enemy, James Russell Lowell, became his successor at the Court of Madrid.

Caleb Cushing was now about to see the last episode in the great slavery controversy which he had watched for more than half a century. In April, President Hayes withdrew the federal troops from South Carolina and Louisiana. Slavery was now abolished; the negro had equal rights before the law with the white man; secession had made its dramatic effort and had failed. We were once again a unified nation, after a sectional strife which had covered nearly six decades. Possibly, when Cushing read the newspapers on the morning of April 25, he did

not realize the significance of what had happened, but we can see to-day that slavery as a political issue had vanished forever.

It was an interesting coincidence that this action by President Hayes came at a moment when Caleb Cushing was arranging to retire from active life. One morning, as he descended the long flight of stairs leading from the corridor of the Attorney General's office, he said to a friend:

"I have just taken a farewell look at the canvased features of the long line of my colleagues which hang on the walls of the Attorney General's office, and have said good-bye to the living incumbent. I am now ready to leave this scene of activity and retire to the quiet and repose of my home in Massachusetts. I have settled up my Spanish matters with the Department of State. I have transferred my large legal practice to younger hands, and am now free to do as I wish, and go whither I please. I might have more diversion here for my idle hours, but I can have more rest and comfort at Newburyport."

On June 26, 1877, he was at Cambridge for the celebration of the 60th anniversary of his graduation from Harvard College. Fourteen of his classmates, including George Bancroft, sat down at that memorial dinner. He spoke there, we are told, in a most eloquent manner, in words which charmed all his companions, even those whose political paths had most widely diverged from his own. So moving were his remarks that one of those present later repeated, as applicable to Cushing in his old age, the lines of Waller:

"The soul's dark cottage, battered and decayed,
Lets in new light through chinks that time has made;
Stronger through weakness, wiser men become,
As they draw near to their eternal home."

There was no despondency in Caleb Cushing's attitude towards life, even though his days were numbered. With regard to his country and its future, he was an incurable optimist. While he was in America on his visit from Spain in September, 1876, there was a great gathering of Essex County folk at Salisbury Beach, at which he consented to be the chief speaker. It was practically his last appearance before a large assemblage. More than seventy-six years old, he was still erect and firm in his bearing, and he held the great audience spell-bound as he described the progress of this nation during his lifetime:

"At my age, life is a retrospect. Old men dwell in the past. We are creatures of the earth in living; in death all that is mortal returns to that earth. I desire to avail myself of this opportunity to impress a single thought, — faith in our country, confidence in its present condition, hopefulness in its future greatness and prosperity. It taxes all our minds to compare to-day with fifty years ago, or to recall the enormous and stupendous changes our country has undergone. We have all witnessed the application of steam to navigation, and the introduction of the railroad and the telegraph, all of which have revolutionized the intercourse of nations and men. All material facts have changed. Have we changed? Has society gone forward in its career of virtue, of honor, of truth and intelligence, or have we gone backwards? Are we worthy of the inheritance bequeathed us by the men of the heroic age of our country? Have we degenerated from our heroic ancestry? In foreign countries I hear it too often said that we have lost their simple and grand virtues and sunk into miserable appropriations of results and power. I deny, — I repel the assertion. . . . I say to you that in material prosperity, in improvement, we are better; yes, I say better, than our forefathers, and have not degenerated. With all the depravity, all the corruption, of our day, there is more religion, there is more of culture, more of moral improvement than there was fifty years ago. When I am told that the

Caleb Cushing's Home
High Street, Newburyport

present day is corrupt, I repel the charge with every possible word from my heart."

It was in this spirit of robust confidence that Caleb Cushing faced the end of life. Those who met him were amazed at his intellectual fire and physical vigor. He still seemed powerful and ready for any arduous task. Some one said to him once, — "Mr. Cushing, isn't your good health now due to your abstemious habits?" "Yes," he replied, "I presume that is the secret. I have never been a temperance man, but a temperate one all my life. We have the five senses given us for rational enjoyment. It is the excesses which wear us out early." To another friend who was reminiscing with him, Cushing said, — "Looking back over my past, I can see that work has been my passion. I have perhaps had little of what other people call real enjoyment in life, but I have been satisfied and do not complain."

And so, in early July, 1877, Caleb Cushing was back again in Newburyport, where he hoped to spend the remainder of his days. Free from all burdening obligations, he could now dwell in retirement and "slippered ease." But still in his bosom burned the wonted fires. In his fine residence on the west side of High Street, he settled down, with the widow and daughter of his brother, William Cushing, to keep his household for him. There his home was with his books. When people called upon him, no matter at what hour of the day, they found him half buried in manuscripts, magazines, and volumes fresh from the press:

> "So, with the throttling hands of death at strife,
> Ground he at grammar."

It was still impossible for him to keep completely aloof from public affairs. On September 6, 1877, he delivered

an address at the formation of the Antiquarian and Historical Society of Old Newbury. In spite of his age he spoke without notes, and his voice rang out like a bell. On the last day of the year 1877, he received an urgent call from Senator Conkling's Mexican investigating committee; and he went to Washington in March, 1878, in order to appear before that body and make strong representations in favor of recognizing President Diaz. On the same trip he completed his last private law case, — a suit by a Cuban, Don Joaquin Garcia de Angarica, to recover a large estate which had fallen into the hands of the Spanish Government. Cushing also had conferences with Hayes and Evarts, at which he protested against the action of the previous Congress in abolishing a number of consulates and reducing the pay of others. In the summer he was approached to see whether he would allow himself to be nominated for Congress from his old district, to which he had now returned as a resident; but he declined the compliment. In September, he was actually nominated for Attorney General of the Commonwealth of Massachusetts, on the ticket headed by General Butler for Governor; but again he refused to run.

The truth is that he had, in July, 1878, an attack of erysipelas so severe that it came as a warning of his approaching end. When he was told what his ailment was, he studied medical books on the subject, so that he might learn all about his case. He recovered sufficiently to be once more at his desk in his Newburyport home. When somebody asked him about his health, he said, — "I have what I have never had before, — seventy-nine years." There, in September, visitors found him among his books, — these friends who had never deserted or betrayed him. Here on the high ridge overlooking the

ocean, he could feel the cool breath of the east wind across dune and marsh, as he used to scent it when he was a boy on the beach at Plum Island.

In these last months he seemed a lonely figure, living largely by himself, and spending much of his time in thinking about the past. With his family he was gentle and kindly, although never unbending and often austere. But his real communion was with the dead, — with the friends who had gone before him, with the great leaders whose companion he had been. All the issues which had so disturbed the men of his generation had now gone forever. Human slavery had almost disappeared as a cause for political dissension, and a race was growing up to whom the perturbations and anxieties of the " 50's " seemed unreal and strange. In his lifetime it might have been said of him, as it was said of the dead Keats:

> " He has outsoared the shadow of our night;
> Envy and calumny and hate and pain,
> And that unrest which men miscall delight,
> Can touch him not and torture not again."

With characteristic courage, he had planned, in spite of his growing weakness, to go to Washington shortly after Christmas, 1878. On Wednesday, January 1, however, he went to bed unusually early, complaining of being tired. Before the next night he was unconscious. He died at eleven o'clock on January 2, while a devastating blizzard raged along the New England shore. His death was peaceful, — merely a quiet transition from this world to the next, without pain or struggle. The next morning all Newburyport heard with sorrow that its " perturbed spirit " was at rest.

"Then with no fiery, throbbing pain,
No cold gradations of decay,
Death broke at once the vital chain,
And freed his soul the nearest way."

All Newburyport was soon in mourning for its foremost citizen. On Friday noon every church bell was tolled for an hour. The funeral took place on Monday afternoon, at his home on High Street, the service being brief and simple, as he would have wished it to be. On a bleak and windy day, with the ground covered with light snow, he was laid in his grave in the New Burial Ground, on Hill Street, where his resting place is marked by a plain marble monument. There he was placed beside the wife of his youth, whom he had survived nearly half a century.

His will, drawn in Madrid on March 2, 1876, made his half-brother, John N. Cushing, the executor, and divided his property into two equal portions, one being given to the children of John N. Cushing, the other to the children of his deceased brother, William Cushing.

It was Newburyport's desire to pay one last tribute to her famous son. On Wednesday, October 8, 1879, a great throng of people gathered in the City Hall for memorial exercises. The assembly room was beautifully decorated. In front of the balcony hung this quotation, in white letters on black cloth:

"Men are we, and must grieve when even the shade
Of that which once was great is passed away."

The following mottoes, one between each window, were appropriately placed around the hall: "SCHOLAR — SOLDIER — STATESMAN — LINGUIST — LAWYER — JUDGE — LEGISLATOR — DIPLOMATIST." Back of the stage was a bust of Cushing, made by David M. French,

of Newburyport; and a portrait of Cushing, presented by James Wormley, of Washington, stood in front of the speaker's desk.

Many of Cushing's friends were present, including at least four of his college classmates, — Green, Walcott, Salisbury, and Sewall, — venerable men indeed. The program had been carefully arranged: the presiding officer was John James Currier, Mayor of Newburyport; George Lunt read a sonnet; the Reverend George D. Wildes, of New York, had composed an original hymn, which was sung by the choir; and the Honorable George B. Loring of Salem delivered an eloquent eulogy. Following the exercises the Cushing Guards marched with muffled drums to the grave of Caleb Cushing, and placed there a wreath of immortelles.

George Lunt was not a great poet, but in his sonnet on Cushing he summed up the essential qualities of the man:

"Few men more versatile have played their part
On the world's shifting stage; not even he
Whom glorious Dryden, with consummate art,
Portrayed as 'all mankind's epitome!'
Jurist profound, and in affairs of state
Of counsel apt; a tried diplomatist,
Spain, China, England, felt his power insist
Upon his country's cause; in strong debate
His fervid spirit led the fiery van;
This scholar versed in tongues, this earnest man
By studious toil who won the title 'Great,'
A stormy course for Fame's proud guerdon ran;
Through years not oft vouchsafed to human kind
Still grandly towered the strength of Cushing's mind."

CHAPTER EIGHTEEN

PERSONAL CHARACTERISTICS

"What broken link
Withheld him from the destinies
That came so near to being his?"

Up to this point we have been dealing mainly with facts; and it is far easier to state facts than to analyze motives or describe personal attributes. To probe into the secret places of the heart, to surmise why a man did this or failed to do that, is baffling because we are dealing with that human element which is as elusive as it is inexplicable. We are led at once into the shadowy realm of psychology, where speculation must take on the value of definite proof. Although we may undertake to elucidate the mystery of Caleb Cushing's personality, we shall probably satisfy no one but ourselves, — if, indeed, our own solution seems to us in any sense complete.

Caleb Cushing was not a genius in the sense that he possessed any unique quality or gift. Nor was he endowed with that imaginative or creative power which we associate with the artistic temperament. When he wrote poetry, he composed with fluency and correctness, but only because he put forth all the power of his indomitable will. His verse lacks even the slightest trace of what is called inspiration. But he was extraordinary in that he had developed the attributes of average men to an unusual degree. It may be said without exaggeration that he could have distinguished himself in any field, for he had enough intelligence, persistence, and self-confidence

to enable him to do everything that sheer force of brain and will can accomplish. It would be illuminating to contrast him with his friend and contemporary, Nathaniel Hawthorne, who had genius of the highest order as a writer, but who would have failed completely, through both shyness and ineptitude, in any other occupation. Hawthorne's unique genius is undoubtedly a rarer and more precious quality than Cushing's talent; but the latter's happy combination of energy, patience, and courage cannot well be dispensed with in this world of everyday duties.

To a statesman, a striking personal appearance is an important asset. The magnificent physique, massive head, and piercing eye of Daniel Webster gave him at once command over his fellows. So also Caleb Cushing was fortunate in his physical endowment. He did not, as we have seen, always enjoy perfect health. As a young student and lawyer, he often over-worked, and was consequently subject to intermittent attacks of weakness, due largely to exhausted nerves. Indeed he seems frequently to have been on the verge of a severe and permanent breakdown. He also had symptoms of tubercular trouble, and actually suffered at least one pulmonary hemorrhage. By the time he had reached middle life, however, he had outgrown many of these ailments and was seldom after that under a physician's care. He went through the bacteriological and climatic hazards of the Mexican campaigns without a day's sickness; he spent an entire summer roughing it in the deep forests of Minnesota; and, at the age of seventy-six, he spoke in the open air to an audience of five thousand for more than half an hour without visible fatigue. In his old age he seemed a marvel of vigorous manhood, with the blessing of perpetual virility. He did take excellent care of himself.

When he was in Congress, he used to postpone all hearty eating until exciting debates were over. He was invariably temperate in his personal habits. He ate only in moderation, was abstemious in drinking and smoking, and had no debilitating vices.

In the prime of life, he was robust and powerful, not quite six feet in height, but compact and tightly built. In his cheeks there was always a ruddy glow of color. His eyes were small, but very bright and restless. His face was strong and resolute, the lower jaw having that firm setting which is the sign of a tenacious and determined character. He impressed people as being exceedingly handsome. His voice, a rich and deep baritone, "musical as Apollo's lute," was of wide range and carried an incredible distance. In large gatherings, like the conventions at Charleston and Baltimore, he was heard without difficulty in the far corners of the hall. His erect and dignified carriage added to his impressiveness; indeeed all the physical attributes of a great orator were his.

His capacity for endurance certainly stood him in good stead during a life of unremitting industry. Robert C. Winthrop once said of him:

> "He was a man of wonderful versatility, of prodigious intellectual and physical energy; with no taste for recreation, no willingness for rest, and who seemed to find a positive luxury in every fresh field for labor."

He required little sleep, four hours being, in his opinion, sufficient for any healthy man. Rising always at sunrise, he toiled often beyond midnight, when he would sometimes throw himself on a lounge for a short rest with his clothes on. As a young lawyer in Newburyport, he never failed to be at his office in the evening. In the

Athenaeum Library, in Boston, where he often carried on researches, he was the first reader to appear at the door in the morning. He had no periods of indolence or dissipation, but was invariably at some task. Once when he was ill, his physician ordered him to stop work, but, on his next visit, found his patient studying in bed, and had to allow him to continue lest his mind prey on itself. No American in public life has ever displayed a greater capacity for sustained labor.

Equally remarkable was his gift for intense concentration, which enabled him to accomplish feats little short of miraculous. Within a few hours, he could gather the important facts in a case, digest this material, and formulate an argument. More than once he sat up all night preparing a brief which must be submitted the next day. When he had once devoted himself to a specific task, he never ceased until he exhausted its possibilities. Webster said that Cushing had not been in the House of Representatives six weeks before he was acknowledged to be the highest authority on what had been the legislation of that body on any question. The fact is that, before taking his seat, Cushing had shut himself up with the necessary books and had studied the details of legislative procedure until he knew them thoroughly. Few Congressmen have taken the trouble to do anything like that.

This power of concentration was supplemented by a love of order, exactness, and punctuality, all manifestations of his dislike of any waste of time or energy. He was so systematic that everything was ready to his hand. Before the days of the card-catalogue and the letter-file, he had learned the economy of knowing precisely where every important paper is located. His information was all classified and pigeon-holed. Once "Honest John"

Davis, who had to reply in the Senate to Thomas H. Benton on the fisheries question, sent for help to Caleb Cushing, who opened a drawer, extracted a bundle of documents, and said, — "Take this to Mr. Davis, and tell him that he might search months elsewhere without finding the information it contains." Frank W. Hackett, his Secretary during the Geneva Arbitration, tells us that Cushing instructed him to preserve every scrap of paper, even to visiting cards, and to file them carefully. Cushing himself, with the most scrupulous thoroughness, tied up innumerable packages of letters and clippings, each labeled in his neat hand-writing, and stored them away in air-tight boxes. He hated immeasurably to have a book out of place on his shelves or a pamphlet mislaid.

As part of his desire to utilize every moment of time, he was always punctual, almost to the second. A Washing real estate man who wished to show him some property, asked at what hour he should call. "Five o'clock to-morrow morning," was the reply. The agent was not used to such early rising, but decided to be prompt; when he drove up to Cushing's door, the latter was standing waiting on the steps. General Banks used to tell a story of a ball given to members of Congress by citizens of the District of Columbia. The hour mentioned on the invitation card was eight o'clock. When Banks entered, a few minutes after eight, he found Cushing, a lonely figure in the middle of the empty hall. He, at least, had been on time.

With this industry and delight in system went a memory as remarkable as that of Macaulay. Cushing never forgot anything which he wished to remember. He gave quotations with the utmost exactness, even to each little "a" and "the," and could detect instantly any mistake in phrasing made by another. His mind was a store-

house of information from which he could draw what he wished at a moment's notice. Once several men who knew of this trait and who were about to meet him at dinner, concocted a conspiracy. They spent some hours reading up on the subject of Chinese musical instruments, and then, in the course of the evening, introduced this topic quite casually. After they had discussed it at some length among themselves, one of them appealed in an artless way to General Cushing, who had thus far been silent. He at once poured forth a flood of knowledge, not only about Chinese musical instruments, — which, with his customary thoroughness, he had investigated during his residence at Macao, — but about musical instruments in general. So overwhelmed were the conspirators that their faces betrayed them, and they had to confess their plot.

At a dinner given during Pierce's administration by Senator Bright, of Indiana, the host was speaking of a span of horses which he had just purchased, and which were said to come from the famous Morgan stock. He turned to General Cushing and asked, "By the way, do you know anything of this Morgan breed?" "Oh! yes, indeed," said Cushing, and at once began a gradually ascending pedigree of grandsires and grandams, much to the satisfaction of Bright, but to the weariment of the other guests, who did not happen to own horses of such illustrious lineage. Finally there was a pause, and Bright was apparently about to propound another question, when Secretary Dobbin interposed, "Don't, don't; leave off where you are, or he will tell us the number of hairs in every horse's tail!"

His political enemy, Wendell Phillips, certainly a competent judge of scholarship, once said, — "I regard Mr. Cushing as the most learned man now living." Certainly

in this respect he fulfilled the promise of his youth, reading incessantly and omnivorously, and with both rapidity and thoroughness. A gentleman on one occasion came up to Colonel Barnes, Marshal of the United States Court for the District of Massachusetts, and asked for Cushing. "Yes, yes," replied Barnes, "I know where he is. You will find him up in the Athenaeum Library. He thinks there's a book up there which has got something in it he doesn't know; but I guess he'll find himself mistaken."

Many were the tales then current regarding the extent of his knowledge. During his ministry in Spain, Cushing dined frequently with the British Ambassador, Sir Henry Layard, who had superintended the excavation of Nineveh. Over their cigars one evening, this topic was introduced; whereupon Cushing, without ostentation, gave a discourse on the history of Nineveh which astonished even Layard. In a case like this, Cushing might have been suspected of "cramming" for such an emergency. But there are many other illustrations of the same faculty. At a gathering of Pierce's cabinet, a matter involving a small German principality came up unexpectedly for discussion. The other members having avowed their ignorance of the country in question, Cushing proceeded to enlighten them by giving a full account of its location, population, government, and peculiarities.

The incident which perhaps best illustrates the extent and profundity of Cushing's general knowledge happened in the summer of 1850. The publishers of a well-known dictionary had sent him a complimentary copy, with the request that, at his leisure, he glance through it and comment upon its good and bad qualities. In reply, Cushing wrote, praising the book as "a monument of beauty and accuracy," and calling it a work "indispensably

necessary to every scholar who desires to be master of the English language."

After these polite preliminaries, he went on to say that there was one section the literary execution of which was defective to an extraordinary degree, — the "Pronouncing Vocabulary of Modern Geographical Names." Having made this comment, he added facts to substantiate it. He proved that the Vocabulary was unsystematic, unscientific, and carelessly built; and he adduced literally dozens of examples of gross inaccuracy and ignorance, taken from virtually every modern European tongue, in each case showing that he himself was entirely familiar with the language in question. Cushing's verdict was positive:

> "In a word, my dear sirs, the 'Vocabulary' is a disgrace to your otherwise admirable publication; and it is so bad as to be unamendable. A new one ought to be recomposed, by the aid of special gazeteers of each country . . . under the supervision of two or three painstaking polyglot scholars."

He added that his conscience was troubling him as to whether he ought not to make a public exposure of the errors which were being propagated through the dictionary, intimating that, unless something were done to amend them, he would print his criticisms in the press.

Within two weeks Cushing had a reply from the publishers, enclosing a long defense by the editor, Professor Noah Porter, of Yale, in which the latter, while admitting an occasional error, undertook to justify the general scheme of the work. Once more Cushing set to his task, bringing together page after page of unmistakable blunders, and presenting a mass of evidence so overwhelming that no fair judge could doubt that he was right.

The publishers, after consulting with Professor Porter, made arrangements to have the mistakes corrected in a new edition, and even invited Cushing to assist; but the latter had scruples about accepting money for a task which he himself had created. Nothing more occurred until December, 1851, when Cushing wrote to the publishers complaining that they had sent broadcast an advertisement in which the "copious list of geographical names" was especially commended, in capital letters, for "its value in securing accuracy and uniformity in the pronunciation of geographical names." This advertisement irritated Cushing, especially since he had, eighteen months before, pointed out that "the number of gross errors is nearly as great as the number of names." Stirred to action, the publishers evidently went at once at the business of preparing a new "Geographical Table," but the editor had trouble with his eyes, and delay followed delay. At last, on September 19, 1852, Cushing wrote a final letter, in which, after recapitulating the facts, he said:

> "I shall be at Lenox next week, and unless I receive there conclusive assurance of the correction of these errors within a reasonable fixed time, I shall consider it my duty to go to the public immediately on the subject, whatever may be the effect on the credit of the Dictionary."

The necessary assurances were given; the book was revised to satisfy Cushing; and he had the gratification of having performed a service to accurate scholarship. Not the least amazing feature of this affair is Cushing's ability to make such a thorough examination of the subject in such a brief period of time.

Cushing's intellectual curiosity was insatiable, even in small things. There is an oft-repeated story of a visit

by Cushing to a well-known Boston lawyer, to whom he said, "Mr. Randall, what do you call those strips left in your check book on which you write your notes when you are making out a check?" "Well, really, I don't know," replied the lawyer; "I suppose they are marginal notes." "No, that isn't the name," said Cushing, and left. Several weeks later Mr. Randall received an envelope postmarked *Newburyport*. When he opened it, he found this enclosure:

STUBS

Yours,

C. Cushing

Not until he recalled his last conversation with Cushing could he understand this curt communication. Then he realized that the latter had never abandoned his quest for the exact word. Not long before his death, he turned to his niece and said, "Margaret, I see the ladies are to wear so-and-so the coming season," giving in detail the new Paris fashions. He used to say that there was no one so ignorant that there was not something to be learned from him.

His range of interests was astonishingly wide. He once asserted that he seldom found a book in which he could not discover something of value. In his latter years, for instance, he went through an incredible number of yellow-backed romances, saying that they rested his mind. On the whole, however, he preferred history to fiction and prose to poetry. It was his habit to read a magazine straight through from cover to cover, perusing every article, no matter how trifling, until the end was reached. It was such absorption of ideas which enabled him to discourse with authority upon physiology and embryology, upon botany and astronomy, upon the

Greek drama and the literature of the Italian Renaissance.

Cushing's marvellous memory, combined with a kind of sixth sense, was responsible for his linguistic attainments, in which no American of his generation excelled him. Before he was twenty-five, he had mastered French, Spanish, Italian, and Danish. Both Latin and Greek were for him as simple as English, and in his old age he acquired German, merely as a pastime. At a diplomatic dinner at the Russian Embassy in 1853, Cushing surprised everybody by conversing with his host and M. de Sartiges in French, with Don Calderon de la Barca in Spanish, with Baron Testa in Dutch, with Baron Von Gevolt in German, with de Figaniere in Portuguese, and with the Representative of the Two Sicilies in Italian. A friend recalled that on one occasion he dictated an opinion in a Mexican Grant Case to three amanuenses at once, — one writing English, one French, and one Spanish. He easily kept them all busy.

As a young man, Cushing was ambitious for literary success, and made, as we have seen, a considerable reputation as an essayist. In the end, all such aspirations were subordinated to his political career, but even before that, he must have realized, with his common-sense and his tendency towards introspection, that his style was ponderous and dry.[1]

He lacked that *divinae particulam aurae*, that divine gift, which makes poets and prophets. Such verse as he wrote was clear, correct, and cold, and heavy in a

[1] Some curious person once, after an analysis of Cushing's speeches, estimated that he used 31.4% Teutonic words, 62% Latin, 4% Greek, and the remainder scattering. This compares favorably with Webster's 62.6% of Latin words, Sumner's 61%, and Adams's 64%.

didactic eighteenth century way. A fair specimen is a hymn, composed about 1835:

We praise thee, God, when morning's ray
  In Orient skies begins to shine,
And once again returning day
  Wakes on this glorious world of thine.

We praise thee, God, whose mighty hand,
  Supreme in love, supreme in power,
Rolls on the sun from land to land,
  To light and glad each fleeting hour.

We praise thee, God, at evening tide,
  With all the starry hosts on high,
Which beam as if, thy throne beside,
  To hymn thy greatness through the sky.

At morn, at noon, at eve, we praise
  Thy might and grace on bended knee,
And hearts of grateful joy still raise,
  Creator, Saviour, God, to thee.

Of this, the best that can be said is that it is an excellent illustration of the triumph of perseverance over native practicality. As an example of his mastery of a more highly technical form, the following sonnet may be worth quoting:

Lady, I would not that I were an air,
  The soft sweet fragrance of some tropic isle,
  To seem its native flowers amid, the while
It plays within the tresses of thy hair;
Nor would I were a sunbeam, that I might
  Swim in the liquid lustre of thine eye,
  Until, reflected thence, in that bright sky
Transfigured to a more celestial light.
No, rather would I were a memory
  A hope most dear, a holy thought, to be

> Saintlike, amid all saintly things, enshrined
> In the high temple of thy maiden-mind,
> As, choirs of cherubim among, 'tis given
> Spirits beatified to dwell in Heaven.

Here again, as we might expect, Cushing has conquered every difficulty in meter and rhythm; nothing but inspiration is wanting to make his verse good. Unfortunately the omitted element is one not always easy to supply.

Cushing undoubtedly chose wisely in abandoning literature for a more active life. Yet he had many temptations to persevere as a writer. At one time John Greenleaf Whittier hoped to secure Cushing as a collaborator, and indeed wrote him, April 3, 1841, as follows:

> "I wanted to see thee some time about publishing a small volume, somewhat on the plan we once talked of, — about the Merrimack, — with one or two engravings of the scenery, etc. It seems to me that, if got up in a good style, it would be no discredit to our native valley."

But Caleb Cushing was then in the midst of plenteous troubles, and within a few years he and Whittier were to be estranged over the Mexican War.

Under certain circumstances, Cushing might have turned, like Bancoft, Prescott, and Motley, to the writing of history, at which, with his passion for accuracy and thoroughness, he might conceivably have done as well as they. It will readily be believed that he hesitated between scholarship and politics, and, even when he had been long in public life, there were moods during which he looked with envy on those who could devote themselves to quiet study. To many people, he seemed to be all mind. "It is rarely," said a distinguished critic,

speaking of Caleb Cushing, "that God puts so much of his intellectual spirit into mortal form."

In the fine arts, Caleb Cushing had some interest, and he was a critic of correct, if rather conventional, tastes. It was not easy to bring up a topic in music or in painting with which he was unfamiliar. In his own house he had a large gallery of pictures which he had secured in Mexico and Spain, many of which still remain in the family. His private library, sold in October, 1879, contained some rare items, including about two hundred volumes in Chinese. The catalogue as then printed shows almost no works of fiction and relatively few volumes of poetry; there were, however, excellent editions of the Greek and Latin classics, as well as complete sets of the greatest German, French, Italian, and Portuguese writers. In addition he possessed many histories, ancient and modern, of Spain, of the Spanish provinces, and of the South American States, together with an extensive collection of legal treatises, especially on international law.

A word must be added, also, regarding his fondness for science, in all its branches. In his youth he had shown rather a marked scientific turn of mind, which might have made him an eminent botanist or geologist. He was an active member of the Boston Society of Natural History, and in 1838 sent in a collection of cryptogamous plants, which was warmly appreciated. He experimented with various shrubs and flowers, evidently with much success. In 1849, a well-known gardener wrote him, asking Cushing to send him a cutting of the Great Syrian grape, which, he had heard, Cushing had grown on his Newburyport estate. When Darwin's *Origin of Species* appeared, Cushing was one of its earliest readers in this country, and was converted at once to the theories there

advanced. In the midst of his other duties, Cushing never ceased to keep in touch with the latest discoveries in the field of science. During the Civil War, he went to Cambridge to look through the telescope there at a small newly discovered star near Sirius. He viewed the spectacle with keen interest, and not many days later made a speech in the Massachusetts House, in which he drew a parallel between the stellar system in the depths of space and our own political system then being tested by war.

In his prime, Caleb Cushing was one of our greatest platform lecturers. He was never, however, a "popular" speaker, in the sense in which we apply that term to W. Burke Cockran or William Jennings Bryan. He scorned any resort to the trickery of the demagogue or any attempt to play upon the passions of a mob. With a cultured and critical audience he was, perhaps, at his best, for there his scholarship was appreciated. It was his intellectual power, rather than his intense feeling, which constituted his true strength. Nevertheless when his emotions were fully aroused by some injustice or perversion of fact, he could overwhelm an opponent by the sweep and fervor of his attack.

Cushing was always careful and exact in his method of delivery. He had but one gesture, — a downward movement of extended forearm and projected index finger, which he used to emphasize any significant point. In his speech there was no hurry, no uncertainty, no confusion. Everything was lucid, definite, and carefully thought out. In all his career, he never gave a speech which was slipshod or ill-prepared. He was brought up in a group to whom public addresses were part of the daily scheme of things. His friends, — Webster, Choate, Everett, — were men who were favorites in the Lyceums through the eastern states. Of this kind of speaking,

informative, yet not technical in tone, Cushing did his full share, and it is but his just due to add that he held his own with those orators just mentioned. He seems never to have been at loss for a subject, for his travels in foreign countries, especially in Mexico and China, furnished him material to which people were glad to listen.

As a lawyer, Cushing took high rank, and, if he had been able and willing to devote himself systematically to that profession, he would have stood even higher. His cases, however, could be taken up only intermittently, for his attention to his clients was interrupted by his periods of public service. As it was, he is classed with Choate and Webster, with Reverdy Johnson and Charles O'Conor, as one of the very greatest of American constitutional lawyers.

Cushing's peculiar merit as a lawyer lay in his skill in marshaling evidence, in bringing up an imposing array of precedents and authorities, and arguing from them to an unavoidable conclusion. Once grant his premise, and his deduction was unassailable. Confident of his powers, he disdained trying to win his point by persuasion. To the end of his days he cherished the delusion, — once the belief of the unfortunate William Godwin, Shelley's father-in-law, — that he had but to bring the truth to the attention of people in order to have his case granted. Thus he had immense influence over judges, who could usually appreciate his logic; but he could not, like Choate, "run away" with a jury. Cushing and Choate, arrayed on opposite sides, once arranged a delay over-night, so that Choate might prepare to answer Cushing's law and Cushing might rebut Choate's points to the "twelve good men and true" in the jury box.

Like Everett and Sumner, John Hay and Woodrow Wilson, Cushing was an excellent illustration of the

scholar-statesman, — a type rather oftener found in Great Britain than in the United States. Like these men, too, he had a certain aloofness, mingled with shyness, which made it difficult for him to associate too intimately with his fellows and which kept him from a knowledge of human nature. He was not a good judge of men, and was thus often the victim of schemers, who found in him a person in whom there was no guile. Nor could he deal with others successfully in business ventures, for he did not comprehend the motives of State Street. He had none of the adroitness of those small figures who turn rapidly and sail forward with every shift in popular sentiment. He understood perfectly all the theories of politics, for he could read about them in books, but, in the give and take of party conflict, he was sometimes singularly helpless. He was never haughty or superior. He was no snob, either social or intellectual. He was simply incapable of mingling with others in an unreserved way. No one ever grew too familiar with Cushing, slapped him on the back, or called him "old man." Even when he unbent, he still seemed formal and rather frigid.

One phase of his character has been much misunderstood. Nathaniel Hawthorne, in his *Passages from the French and Italian Notebooks*, has the following record of a conversation with Franklin Pierce:

> "Speaking of Cushing, he [Pierce] told me that the unreliability, the fickleness, which is usually attributed to him is an actual characteristic, but that it is intellectual, not moral. He has such comprehensiveness, such mental variety and activity, that, if left to himself, he cannot keep fast hold of one view of things, and so cannot, without external help, be a consistent man. He needs the influence of a more single and stable judgment to keep him from divergency, and, on this condition, he is a most inestimable coadjutor. As regards learning and ability, he has no superior."

As a matter of fact, every incident of Cushing's career shows that he was a positive personality, utterly unlike the weather-cock described by Pierce. Cushing invariably took sides on each important issue, and, when he had once adopted a course of action, he was little troubled by doubts or hesitations. He knew only by hearsay of that wavering between two courses which is so frequently the weakness of great statesmen. Once having made up his mind, he was both loyal and unyielding, and his tendency was to be confident, even dogmatic. A typical illustration is his attitude towards the Democratic-Free Soil coalition in Massachusetts. From the beginning he was hostile to this alliance. When he was out-voted in the caucus, he still continued in his opposition; and finally, when an opportunity presented itself, he, as Attorney General, went out of his way to issue his "Ukase," condemning the coalition and threatening with punishment those Democrats who gave it their adherence. Often this tenacity of spirit overcame his instinctive good judgment. He could not comprehend the *nuances* which, to sensitive persons, occupy the obscure borderland between what is unqualifiedly right and what is absolutely wrong. The side which he espoused became at once the *right* side, and the other was just as surely the *wrong* one. Cushing was temperamentally a controversialist, entirely honest in his opinions, but vigorously partisan. He changed his views more than once, but it can never be said that he wavered weakly between two alternatives. Nor is there any evidence that he ever altered a political conviction in order to gain any emolument or advantage for himself.

On the contrary, his course as a statesman was taken, if we study it carefully, in utter disregard of any possible reward to be secured, and usually required no small degree of courage. The selfish and unscrupulous politician

aims primarily to discover and follow popular currents of thought. Caleb Cushing, reversing this practice, seems to have flown deliberately in the face of fortune. When he chose to take Tyler's part against Clay, he flouted the advice of practically all his New England associates in the Whig Party, thus bringing upon himself a kind of ostracism particularly difficult for a man of his antecedents and education to bear. When he lent his support to the Mexican War, he did so contrary to the counsel of most of his Beacon Hill and Mount Vernon Street acquaintances; but he had considered the matter through sleepless nights and was resigned to social martyrdom for a cause which he deemed to be just. It could not have been altogether delightful for him during the decade preceding the Civil War to hear himself reviled by his former constituents and denounced as a traitor to the Commonwealth; yet he went on his way unswervingly, and his assertions of personal independence in Faneuil Hall are worthy of being placed beside similar utterances of Webster. Judges may disagree as to the rightness of his decision in each of these three instances, but they cannot withhold from him the credit which belongs to a man who deliberately espouses an unpopular cause.

Caleb Cushing was unquestionably ambitious and desirous of winning an enduring fame. Miss Hannah F. Gould, of Newburyport, wrote for him a so-called "epitaph" which is not without a good deal of truth:

> Lay aside, all ye dead,
> For in the next bed
> Reposes the body of Cushing;
> He has crowded his way
> Through the world, as they say,
> And even though dead will keep pushing.

But it is not a fact that, to this ambition, all else was subordinate. His political career, analyzed step by step, shows no disposition to sacrifice principle to success. He has been called inconsistent because he was a Whig in 1835 and a Democrat in 1847. But surely a man may change his party without incurring the suspicion of self-seeking! Gladstone is not the least notable example of a statesman who lived long enough to attack in his maturity the very theories which he had upheld in his early manhood. Compare Cushing with Clay, who vacillated on nearly every great public question, and who actually, in 1844, made a *volte face* on the Texas issue solely in order to present a bid for the presidency. Caleb Cushing changed his party allegiance twice. On the first occasion, he made the shift from the most honest of convictions. He could no longer dwell in the same political camp with Henry Clay; and the Whigs, when he had thus avowed himself, would have nothing more to do with him. It was loyalty to his own inner self that drove him from the Whig Party. He took as his guide the advice of Polonius to his son, Laertes:

> "This above all: to thine own self be true,
> And it must follow, as the night the day,
> Thou canst not then be false to any man."

On the second occasion, in 1861, he left the Democratic Party because, in his opinion, it assailed the integrity of the Union, and he loved his country more than he could love any section or group of citizens. Here again his motives are both clear and unassailable. Surely an inconsistency of this sort is less blamable than the blind partisanship which keeps a man a Republican even when he disapproves of the candidate and the platform. In Caleb Cushing's career there were mistakes in judgment.

He would otherwise be among the gods. But to charge him with self-seeking, with lack of moral courage, with contempt of principle, is utterly to misinterpret his character.

He has sometimes been described, — especially by those who prefer to repeat catch phrases without investigating their truth, — as "tricky" and "evasive." The fact is that he was almost ludicrously deficient in the small arts of the politician. He lacked tact, adaptability, and finesse. At heart a "plain, blunt man," he did not know how to dissimulate or to ingratiate himself with his enemies. It probably never occurred to him that it might be wise or safe to placate a foe. He was ever loyal, honorable, and straight-forward in his dealings with his fellows. His battles were fought in the open, where all men could look on and see.

All Caleb Cushing's tastes were abstemious. He cared nothing for luxury or ornament. An interesting account of his frugality is related by George S. Boutwell, in his *Sixty Years in Public Life:*

"While I held the office of Secretary of the Treasury, General Cushing gave to a friend of mine, and to myself, an invitation to drive out to his farm, the Van Ness place, about six miles from Washington, on the Virginia Heights, and take tea with him. After business, we drove to the farm. I took a seat with Cushing in his buggy-wagon, and my friend followed in another vehicle. As we were passing through Georgetown, we stopped at a shop where Cushing obtained a loaf of bread. Upon reaching the place, we were taken over the land. Its quality was inferior and it showed the neglect of former owners, and there were indications that the present owner had done little or nothing for its improvement. The foreman was a Virginian, with but little knowledge of farming. The housekeeping was crude. The table was a coarse one. There was neither tablecloth nor napkins. The repast consisted of tea, the bread purchased on the way, soft butter, cold corn beef, and

blackberries. When we entered the room, Mr. Cushing went to a bureau, and took from a drawer a package which contained steel knives and forks, such as I had been accustomed to sell when a boy in a country store. From the appearance the cutlery had never been used, but its antiquity was marked by spots of rust."

In his later life, especially, his tendency towards economy became almost parsimony. He dressed in the most unpretentious way, caring nothing for current styles and allowing himself many eccentricities. It is reported that on one eventful evening he appeared with a bright red ribbon for a neck-tie. An irreverent reporter once described his costume as follows:

"He had on a suit of clothes evidently bequeathed him by some client in chancery, who had been of some sizes larger, and of an older fashion. They hung loosely upon his legal body, while around his neck was something resembling a pudding. His hat jammed back on his head was ancient of days. . . . His face is the youngest part of him, and yet retains its old clear outlook."

His shabbiness of dress and carelessness about his appearance could not, however, disguise his native aristocratic bearing, and in any gathering he was sure to be a conspicuous figure through his dignity and personality. He may have been, as one journalist pictured him, "a slow-moving man, dressed in rather rusty black," but his massive head, around which the still dark hair formed a crown, drew curious eyes in his direction and brought him the respect which he had abundantly earned.

He was almost absurdly indifferent to money. His own debts were paid promptly, and he never let bills accumulate, but his carelessness in other respects used to annoy his father and brother, who were punctilious and shrewd business men. He rarely made an effort to col-

lect delinquent accounts, and he lent his spare cash in a most inconsequential manner. Whenever he chose to devote himself to it, he could make money rapidly in the law. He was very liberal with presents, especially among his relatives, and, on his return from other countries, he seldom failed to bring home gifts to his brothers and their families, — gifts which were selected with discernment and with some consideration of what would be really suitable. Sometimes it was a necklace or a jewel for a favorite niece or a set of china for a sister-in-law; again it would be the silk for a dress or a parasol of unusual design; but he never arrived home empty-handed.

Certainly he was one of the least selfish of men. It is still a tradition that he once walked the floor all night with an infant half-brother in his arms rather than disturb his sleeping mother. Like most prosperous men, he was rarely free from the importunity of impecunious relatives. He had two brothers-in-law, — members of his wife's family, — who annoyed him continually with requests for small loans, and who, in spite of repeated assistance, were always without funds. They presumed upon his relationship to address him in a tone of intimacy which he was too kind-hearted openly to resent. Though he was sorely tried, his patience was unfailing, and they were not slow to take advantage of his generosity. In his home he was a good son, a good husband, and a good brother. In his old age, he kept together in one room every little object that had been his mother's. There was no labor or trouble that he would not undergo for a friend. To those who sought him out, he was uniformly courteous, especially to younger men who came to him for counsel. He pointed out weaknesses, and gave to merit judicious praise.

Cushing did not care for either frivolity or dissipation,

which he considered to be evidences of feeble character. Of him it might have been justly said *Labor ipse voluptas.* At dinner he had very little small talk and was far from being a sprightly wit. He usually sat in silence until there developed a subject for discussion in which he found some marked interest, upon which he would then proceed to discourse fluently. Sam T. De Ford, of Newburyport, wrote in a letter, March 29, 1859:

> "My friend Cushing lives on the opposite side of the street and spends a part of every evening he is in town with me. He was here last evening, took his cigar as usual, and seated himself in what he calls Sleepy Hollow and was pretty soon off to the land of Nod. Being long used to this trick of his, I find I cannot prevent it unless I can start a subject that will stir him up."

He was not at all what is known as a clever man. His jests were made with a kind of grim pleasantry, and he smiled "as if he mocked himself." Only one specimen of a *bon mot* has survived. In Geneva, at dinner, a French lady said to him, "Mr. Cushing, what is flirtation?" "Madame," said the statesman, "I should say that it is *at*-tention without *in*-tention."[1]

With women, Cushing seems always to have been a favorite. His correspondence indicates that he was besieged by admirers, who flattered him and made advances which seem only too obvious. He himself apparently enjoyed a mild, innocuous affair, but he was too discreet to allow himself to be captured. In his middle life he evidently considered marrying again, especially at times when loneliness and depression settled upon him, but he could never bring himself to forget the wife of his youth

[1] He is reported by Mr. Alvey A. Adee to have said that reminiscences are generally "reminuisances," — a remark which may have been an unconscious reflection on his future biographer.

and her memory continued to be dear to him until the end.

In his religious views, Caleb Cushing leaned towards what was conventional and established. Although he was not a communicant of any church, he supported some religious organization wherever he lived, and attended Sunday services with some regularity. In 1857, he gave a valuable lot of land in Washington to James A. Harrold for a Protestant Episcopal Church in that city. The walls of the new edifice were being laid when the war broke out. Everything then went to pieces in the church finances and the lot was sold for taxes. Cushing promptly bought it in again, disposed of it to a sect of English Lutherans, and gave one-half the money to build another Protestant Episcopal Church on the corner of 12th and N Streets, known as the Church of the Incarnation. The value of this gift in 1880 was more than $20,000.

In most of the recognized Protestant doctrines, Cushing undoubtedly had faith. In 1862, for instance, in the course of a speech made in the Massachusetts General Court, he said:

"Sir, I may say, for us all, for every member of this House, I will say it, — I say we all revere the Bible. We revere the Hebrew Scriptures as the oldest historical book which has come down to modern times, coeval with the oldest of the sculptured monuments of Assyria or Egypt. We revere it as affording to us invaluable information regarding the ethnic origins of mankind; tracing up those origins, not as all other histories, to the demigods, or deified men, but to the One Only Eternal God. We revere it, morover, as containing precious treasures of poetry and eloquence, unequalled in any of the intellectual and literary monuments at least of Asia. And we revere it, above all, because it is the record of the revelations and inspirations of God, in the annals of the rise and fall, dissolution and destruction, of the confederate commonwealth of Israel. And we still more revere, — and I think, gentlemen, have a little overlooked

our duty still more to revere, — those Scriptures of the New Testament, which are the record of the revelations and inspirations of God in the foundation and the propagation of the Christian religion, through the advent, and the life, and the ascent of our blessed Saviour and the miracles of the Apostles."

In such matters, Cushing was usually very reticent, but he wrote to a friend in 1836, from Washington:

"I thank you for the interest you take in my religious welfare. It is not convenient for me to enter into particulars on this subject. But one thing I can with perfect security assure you; that, with the expectation of death more than ever before my eyes within two or three years past, I have acquired a settled habit of acting upon deliberate convictions of the mind, which, whether I go right or wrong, gives me at any rate a decision of purpose in which I undertake, and harmonizes my actions to my own conscience."

As he grew older and disappointments came to him, he reached the conviction that life is a tragedy. One of his Harvard classmates said to him in 1877, "Well, Cushing, how does the world go with you?" "Oh," he replied, "It is all a mistake. The play is not worth the candle." In such moods he liked to quote with melancholy fervor the lines of the poet:

> "When I consider life, 't is but a cheat,
> Yet fooled with love, we favor the deceit."

There are at least two questions which every reader of Caleb Cushing's life will wish to have answered. First of all is the inevitable query, "Why did he make so many enemies?" The answer can best be given, perhaps, by summing up once more certain of his characteristics. He had none of the arts which make for popularity. He would never condescend to ignoble things. There was about him a kind of Roman severity and aloofness. He

was a man of no pomp or pretense, of gravity, and "of an ancient freedom and integrity of mind." He had almost none of what we vaguely call personal magnetism, — that quality which belonged to both Henry Clay and Franklin Pierce, but which the Adams family, for instance, have never possessed. People were not drawn to Cushing because of any charm of manner. Although he tried to be gracious and cordial, although his life was full of kindly acts, he completely lacked the gift of making himself loved. Furthermore his aggressiveness and positiveness, sometimes not far removed from dogmatism, aroused the dislike of many. There were always persons, like Benton or Garrison or Lowell, who were ready to believe anything mean or contemptible of him. Cushing, who was reserved, dignified, and rather coldly intellectual, like Benjamin Harrison, often inadvertently injured the feelings of others, who mistook his reserve for scorn and his dignity for haughtiness. Thus it was that a man whose private life was unostentatious and impeccable, and whose public career was singularly open, was constantly being made to deny charges of viciousness, foul play, and deceit.

The second question is obviously, "What is Caleb Cushing's place in history?" He does not belong with the great constructive statesmen, like Hamilton, Webster, Lincoln, and Roosevelt, the men who, to a very large degree, have fixed the destinies of our country. He had an opportunity to become a leader in the movement against negro servitude, but he rejected it, in order to choose, as he thought, the better part. But, although we must deny him a place among statesmen of the highest rank, we cannot refuse him a position with those other leaders, who, working for the welfare of this government, have ensured its progress and perpetuity. It was his

important duty to assist in defending and preserving our national integrity. His services in Congress, in China, in Mexico, in Pierce's cabinet, at Geneva, and at Madrid, entitle him to recognition as one of the foremost of our public servants. The diplomatic counsellor of our government for nearly a quarter of a century, he brought us with honor out of many difficulties. Caleb Cushing should rank with such personages as John Hay, or Charles Evans Hughes, or Elihu Root, — men to whom destiny denied the most exalted office, but who in lesser places were faithful to their trusts. Caleb Cushing was born either too late or too early. If he had been a framer of the Constitution, his legal mind would have been of great value in that constructive work. Had he come to the fore after the great controversial issue of slavery had been settled, he would, perhaps, have avoided many quarrels.

Those who read his life sympathetically cannot help getting an impression of sadness. Here was a lonely heart, eager to be understood by others, but never knowing exactly how to make his longing clear. Successful he was, as the world reckons success: he made for himself an honorable name; he contributed much to the development of the nation. And yet, as he looked back, it was plain to him that he had just failed to reach the loftiest niche, — and he could be satisfied with nothing short of that. It was this consciousness of the inadequacy of his achievement which left him melancholy at the end.

To us, however, he is no failure. He is the many-sided scholar, whose restless energy and potent will carried him from a little New England farmhouse to a place among the leaders of his century. We can picture to ourselves that nervous, active figure, impassive of countenance but with the fires of passion burning in his heart,

who moved among men, sombre and disquieted, driven on always by a secret impulse to some further enterprise. Almost the last representative of the *ancien régime*, he survived his generation, living on into an era of new issues and of younger leaders, but carrying with him into a reconstructed and slaveless America something of the Spartan simplicity, the breadth of vision, and the unalloyed patriotism of those older heroes whom he had known.

THE END

INDEX

Abbot, Amos, I, 385, 393, 446
Abbot, Major, II, 44, 45, 46, 51
Abderahman's Testament, I, 115
Aberdeen, Lord, I, 23, 26
Abolitionism, Whittier on, I, 356
Abolitionists, I, 6, 152; denunciation of, II, 237, 239, 241, 270; distrust of, I, 243, 244; opposition to, II, 107; petition to Congress, I, 183; relations with, I, 251, 256–257; II, 140, 141; support from, I, 204, 249
Active versus contemplative life, I, 118
Adams, C. F., II, 143, 307, 324
Adams, John, I, 46, 71
Adams, J. Q., I, 4, 12, 181, 188, 208, 296, 350; on the annexation of Texas, II, 8; Antimasonry, I, 142; attack by Southern members of the House, I, 334, 337; on the China Mission, I, 412; on the Chinese question, I, 405, 406; Committee on Tyler's conduct, I, 352; *Diary*, advice on slavery, I, 395; Foreign Affairs Committee, I, 330; Newburyport visit in 1837, I, 219, 220; partisanship, I, 353; petitions in Congress, I, 209; prejudices, I, 413; rage against Tyler, I, 352; relations with, I, 144, 330, 332, 335, 352; reply to, I, 353; on right of petition, I, 239; Speakership in 1839, I, 261; supported for Presidency, I, 61
Adams, Mary L., II, 291
Addresses of Cushing: at Bangor, Me., Oct. 2, 1860, II, 265; before the Civil War, II, 263; at Charleston Convention, II, 253; classic on New England, I, 211; to college class on oratory, 1821, I, 47; college specimens, I, 34–35; on the death of Adams and Jefferson, 1826, I, 71; at Faneuil Hall, Dec. 8, 1859, II, 236; at Geneva Tribunal, II, 342, 343; on Great Britain in 1839, I, 257, 258; in Harrison campaign, I, 277, 278; on Harrison, I, 292; maiden speech in Congress, I, 184; on Massachusetts regimental appropriation, 1847, II, 36; "military" address, II, 219; Newburyport and Lowell in 1842, I, 365, 366; on the organization of the House, 1841, I, 297; on Pierce's administration Oct 27, 1857, II, 197; on the Puritans, II, 208, 219; on repeal of the Bankrupt Act and in defence of the Administration, I, 375, 378; at Salisbury Beach in 1876, II, 390; on the settlement of of the West, I, 246; on slavery, June 9, 1836, I, 190, 191; on slavery, at Springfield, Mass., I, 260; at Tammany Hall, 1858, II, 219. *See also* Lectures
Adee, A. A., II, 379, 419
Admiralty law, I, 43
Aga Mahomed Rahim, I, 424
Alabama, II, 250
Alabama (ship), II, 309, 343
Alabama claims, II, 297, 306; payment, II, 355
Alamo, II, 5
Alcohol, I, 35; scandal, I, 48
Alcott, A. B., I, 35
Alhambra, I, 111
Aliens, II, 229
Allen, E. W., I, 52
Allen, W. S., I, 96; advises withdrawal from Congressional contest in 1832, I, 127
Alphonso XII, II, 381
American Annual Register, I, 79, 80, 116
American Anti-Slavery Society, I, 238, 239
American "Case," II, 324, 326, 328; British opinion, II, 331
American Colonization Society, I, 152
American Indians, I, 215
American Party, II, 228, 229
American plan, I, 203
American Quarterly Review, I, 94
American system, I, 67, 68
Americanism, I, 67; II, 25

Amerigo Vespucci, I, 42
Ames, Fisher, I, 17
Amherst College, I, 163, 165
Ancestry, I, 19, 20
Ancient and Honorable Artillery Company, II, 124
Andover convention of, Oct. 17, 1842, I, 368
Andrew, J. A., II, 211, 229; clash with Cushing, II, 215; election of 1860, II, 269; rejection of Cushing's services in 1861, II, 277
Andrews, C. C., II, 179
Anesthesia patent, II, 183
Anglophobia, I, 7, 67, 113, 358; II, 25, 165
Anglo-Saxons, II, 233; unity, II, 26
Annual Register, I, 79, 80, 116
Antimasons, I, 133, 138, 173; Edward Everett and, I, 140
Arbitration, international, II, 345, 346
Argument, I, 345; II, 158, 411
Arista, General, II, 28, 29
Arkansas statehood, I, 190
Army and navy, I, 196
Arthur, Sir George, I, 424
Ashburton Treaty, I, 322, 360, 411
Ashmun, J. H., I, 28
Atheists, II, 217
Atherton, C. G., I, 255, 264; II, 117
Atlantic Monthly, II, 221
Attorney General's functions, history, II, 181
Attorney General's office, II, 178, 179
Attorney-Generalship, II, 131, 132, 136; II, 179
Augusta *Chronicle*, I, 154
Austin, Moses, II, 4
Austin, Stephen, II, 4
Australian system of voting, II, 104
Authorship, I, 55
Azores, I, 421

Badger, Secretary, I, 313
Baltimore Convention of 1852, II, 119, 144
Baltimore Convention of 1860, I, 253, 255; bolters from, II, 260; credentials, II, 255; resignation of Cushing as chairman, II, 258
Bancroft, George, I, 29, 30, 31; on foreign travel, I, 89; indictment of Pierce, II, 192
Bancroft's *History of the United States*, I, 150
Bangor, Me., II, 241, 265
Bank of the United States, I, 135, 136, 222, 229, 267, 308; Clay and Tyler clash, I, 291; Clay's advocacy, I, 291, 296
Bankruptcy Bill and its repeal, I, 318, 375
Banks, N. P., II, 197, 198, 200, 209, 215, 300, 400
Barking dog, II, 377
Barnard, D. D., I, 291, 293, 375, 382
Barstow, Benjamin, II, 140
Bates, I. C., I, 282, 283
Baylies, Francis, I, 82
Beach, E. D., II, 224
Beaman, C. C., II, 329
Belgium, I, 100
Belknap, Eli, II, 105
Bell, John, II, 264
Belligerency, Confederate, II, 307
Benton, T. H., I, 224, 227, 235, 329, 388, 409; on the China Mission, I, 412; on the Independent Treasury, I, 267; on the treaty with China, I, 442
Berrien, Senator, I, 304
Bible, II, 420
Biglow Papers, II, 68
Bird, F. W., II, 236, 369
Birney, J. G., II, 10
Birth of Cushing, I, 9, 15, 18
Bismarck, Otto von, II, 305
Black, J. S., II, 193, 262
Black Warrior (ship), II, 163
Blackstrap, I, 28
Bladensburg, I, 25
Blagg, Samuel, I, 62
Blaine, J. G., I, 4
Blatchford, R. M., II, 91, 93
Bliss, George, I, 141
Bloodgood, S. DeW., I, 393
Blunt, Joseph, I, 79
Boccaccio's *Decameron*, I, 54
Boddily, Aunt, I, 23–24
Bombay, I, 424
Bon mot, II, 419
Books and reading, I, 23
Bordeaux, I, 106
Boston, I, 15; chosen in preference to New York for residence, I, 120; residence in 1833, I, 131; society, I, 44
Boston *Advocate*, II, 119
Boston Athenaeum, I, 79; II, 399, 402

Boston *Atlas*, I, 146, 148, 374; attitude, I, 361; letter from Cushing on Matamoros, II, 46
Boston *Centinel*, I, 39
Boston *Daily Advertiser*, I, 78
Boston *Journal* Editorship, I, 63
Boston *Lyceum*, I, 81; II, 19; Oregon address before, II, 23
Boston *Monthly Magazine*, I, 81
Boston *Patriot*, I, 74, 76, 77
Boston *Post*, II, 66, 67, 139, 207
Boston *Statesman*, I, 37, 75, 77
Boston Union Meeting, II, 235
Botany, I, 32, 50
Botany of the United States, I, 42
Botts, J. M., I, 300, 307, 336; II, 190; coffee house letter, I, 306; impeachment of Tyler, I, 380
Boutwell G. S., II, 97, 102, 107; on Cushing, II, 416; on Franklin Pierce, II, 117
Boutwell and Cushman, II, 100, 107
Bowles, Samuel, II, 279
Bradbury, Ebenezer, I, 132, 133; II, 35
Bradbury, J. W., II, 117
Bradford, Gamaliel, I, 28
Brandywine (ship), I, 415, 424, 425, 430
Brazos, II, 42
Breckinridge, J. C., II, 115, 261, 263, 264
Breckenridge Democrats, II, 263, 267, 278
Bridge, S. F., II, 65
Bridgman, E. C., I, 416
Brigadier-Generalship, II, 36, 48
Briggs, G. N., I, 181; II, 34, 68, 69, 73, 95; discourtesy, II, 51
Brighton, Eng., II, 379
British enlistments in the United States, II, 175
British recruiting in the United States, II, 166
Brooks, P. S., II, 157
Brown, George, I, 373, 390
Brown, John, II, 234; Cushing's sentiments on the affair, II, 236, 238
Bryant, W. C., I, 56; II, 92
Buchanan, James, II, 18, 76, 120, 191, 192, 193
Buckminster, Mary, I, 45
Bull-fights, I, 108
Bulloch, A. H., II, 300
Bunker Hill Monument dedication, I, 414
Burke, Edmund (1729–1797), I, 83
Burke, Edmund (1809–82), II, 116
Burlingame, Anson, II, 300
Burns, Anthony, II, 211
Burr, S. J., I, 371
Burton, Alexander, I, 110
Business, II, 412
Butler, B. F., II, 108, 117, 244, 295; Andrew's acceptance of services in 1861, II, 278; at Baltimore Convention, II, 259; nomination for governorship, II, 267
Butler, W. O., II, 113
Bynum, Congressman, I, 271

Cabinet, II, 134, 137, 186
Cabot, George, I, 17
Calderon de la Barca, Madame, II, 189
Calderon y Collantes, Fernando, II, 386
Caldwell, Josiah, I, 278
Caleb, name, I, 19
Calhoun, J. C., I, 3, 4, 25, 151, 226
Calhoun, W. B., I, 181, 197
California, II, 185, 292
Cambrelling, Congressman, I, 227
Cambridge, Mass., I, 25, 28, 35
Campbell, Sir Colin, I, 425
Campbell, James, II, 135
Canada, II, 316; Great Britain and, I, 320
Canton, I, 403, 404, 431; Americans in, I, 443
Capitalist interests, I, 267
Caroline (ship), I, 248, 319
Carter, J. G., I, 55
Cary, Thomas, I, 12
Cases, important legal, II, 290
Cass, Lewis, II, 33, 95, 120, 122
Cerro Gordo, II, 56, 57
Charleston, S. C., II, 366–367; Cushing's reception in 1860, II, 274
Charleston Convention, II, 243; chairmanship, II, 247; disorder, II, 249, 251, 254; Douglas Report, II, 250; nominations for the Presidency, II, 252; seceding groups, II, 250, 255
Charlestown, Mass., I, 193
Chase, S. P., II, 364
Cheever, B. H., I, 363
Cherokee Indians, I, 351

Chickering, John, I, 159
Chief Justiceship of the Supreme Court, II, 363
Child, D. L., I, 28, 30
China, I, 270; appointment as Minister to, I, 394; banquet in Macao, I, 436; commercial relations, early, I, 402, 406, 408; Mission to, I, 397, 412; Mission cost, I, 451; open ports, I, 405, 408, 438; treaty negotiations at Macao, I, 435, 441; voyage to, reports, I, 422; Wang Hiya Treaty, I, 434, 438, 440, 442, 444, 448; Western relations, I, 453
China, Emperor of, I, 418; letter from, I, 451; letters to, I, 419, 420
Chinese, II, 230; negotiation with, I, 418
Chinese books, I, 450
Chinese costume, I, 416
Chinese Embassy dinner in Boston, II, 300
Chinese etiquette, I, 417, 433
Chinese language, I, 426
Chinese porcelain, I, 449
Ching, Governor General, I, 425, 427
Choate, Rufus, I, vii, 12, 51, 65, 96; Antimasonry, I, 142; conduct in the House, I, 85; Senatorship, I, 284, 285; sketch, I, 54
Circuit judges, II, 180
Citizenship, II, 289; of aliens, II, 229
Civil Law, I, 40
Civil War: prediction, II, 242, 272; record of Cushing, II, 282
Claims of Citizens of the United States on Denmark, I, 66
Clarke, J. F., II, 38
Clay, Henry, I, 3, 4, 25; Bank of the United States, I, 291, 296; birthday celebration, II, 190; Compromise plan, II, 97; defeat by Polk, II, 11; encouragement from, I, 68; financial measures, I, 318, 382; Harrison and, I, 288, 289; opposition to, I, 298; relations with, I, 122, 277, 294, 302, 325; relations with Tyler, I, 296, 301, 315, 317; Texas annexation question, II, 10, 11; Whittier on, I, 250
Clay Whigs, 367, 378, 382, 396
Clayton-Bulwer Treaty, II, 158, 165
Climate of New England, I, 86–87, 88
Coal industry, I, 203
Coalition plan, Democrats and Free Soilers, II, 98, 101; Cushing's "Ukase" on, II, 139
Cobb, Howell, II, 255
Cockburn, Sir Alexander, II, 324, 340, 353; discourtesy, II, 341, 344, 345; Dissenting Opinion, II, 349, 351, 354; personality, II, 349
Coffee house letter, I, 306
Colombia Treaty, II, 301
Colonelcy, II, 36
Colonizationists, I, 153
Columbia River, I, 247; II, 20
Columbus, Christopher, I, 54
Commencement at Harvard, I, 30, 35
Compromise Measures of 1850, II, 97, 107, 120
Concentration, I, 84; II, 399
Congress, I, 72; campaign of 1826, calumnies, I, 76, 79; campaign of 1830–32, I, 121; election of Cushing in 1834, I, 158; first vote, I, 182; special session of Sept. 1837, I, 222, 224; twenty-fourth, I, 181; twenty-fifth, I, 236; twenty-sixth, I, 260; twenty-seventh, I, 330
Conkling, Roscoe, II, 364
Conkling, W. R., I, 4
Connery, T. B., II, 359
Conquest of Nature, I, 34
Conscience Whigs, II, 29, 34, 36, 47
Consistency, II, 196, 415
Constitution, burning, II, 148
Constitutional Union Party, II, 264
Conversation, II, 348, 419
Coombs, William, I, 12
Cooper, J. F., I, 137; Cushing's *Reply* to the *Letter to My Countrymen*, I, 137
Corporal's Guard, I, 302, 304, 322, 334, 360
Corpus Christi, II, 27
Cortez, Hernando, II, 55, 57
Courage, II, 413
Crampton, J. F., II, 165, 166, 169, 171, 173
Creole (ship), I, 357
Crimean War, II, 165
Crittenden, J. J., I, 289
Crystal Palace Exhibition, II, 138
Cuba, II, 158, 162, 176, 225, 316, 360; Grant and, II, 317
Cumberland Road, I, 245
Curtis, G. W., II, 355
Curtis, T. B., I, 95
Curtis, W. E., I, 442

Cushing, Ann, I, 35
Cushing, Benjamin, I, 20, 23
Cushing, Caleb (1673–1752), I, 19
Cushing, Caleb (1703–1797), I, 19
Cushing, Caleb (–1820), I, 20, 35
Cushing, Caleb (1800–1879), I, vii, 3; ability, contemporary estimate, I, 96; achievements up to the age of thirty, summary, I, 96; ambition, II, 414; Americanism, I, 7; ancestry, I, 19, 20; Anglophobia, I, 7, 67, 113, 358; II, 25, 165; animosities toward, I, 3, 327; II, 262; birth, I, 9, 15, 18; boyhood, I, 15; capacity for work, II, 178, 398; college life, I, 24, 26, 27, 31, 34, 35; concentration, II, 109, 399; consistency, lack of, II, 195, 415; conversation, II, 348, 419; costume for China, I, 416; courage, II, 413; course in Mexican War, II, 67, 80; death, will and last tributes, II, 392; defects, I, 7; seventy-second birthday, dinner, II, 329; dogmatism, II, 139, 142; earliest document, I, 32; early home conditions, I, 16; early years, I, 18; eccentricities, II, 417; education, I, 24; enemies, II, 421; frugal tastes, II, 416; generosity, II, 94, 418; health, I, 66, 86–87, 131, 132, 148, 244; II, 127, 187, 391, 397; home surroundings, 1816–26, I, 57; honors and public position in 1821–24, I, 56; independence, I, 252; II, 414; industry, I, 56; II, 109, 177, 398; law practice, I, 51; II, 290, 411; liberality, II, 417, 418, 420; linguistic ability, I, 86; II, 406; literary production and its quality I, 40, 42, 97, 114; II, 406; loss of his wife, I, 129–130; love of knowledge, I, 23, 30, 32, 55; II, 346, 404; loyalty in 1861, II, 276; marriage, I, 59; memory, II, 400; military ambitions, I, 248; II, 33, 36; mistakes, I, 5; money matters, personal, I, 230, 235; II, 39, 41, 82, 417; oratory in college, I, 34; order and system, II, 399; patriotism, I, 320; II, 25, 281; personal appearance and characteristics, I, 378; II, 187, 247, 260, 294, 304, 330, 347, 396; personality, I, 59–60; II, 188, 201, 209, 348, 396; personality, military, II, 58, 59; physical endowment, II, 397, 398; popularity, I, 73, 279, 280; positiveness, I, 230; II, 413; President-maker, II, 111; productivity, I, 66; professional beginnings, I, 51; religion, II, 420; resentment against, II, 262; reserve, II, 421, 422; sadness, II, 423; school days, I, 23; scientific interests, I, 32; II, 409; slanders, II, 47, 68, 103; slavery position, I, 150, 176, 186, 193, 210–211, 252, 395; II, 79, 153, 158, 203, 236, 240, 266; social life, I, 44, 199; II, 14, 188; statesmanship and place in history, II, 422; success, II, 423; tact, II, 186, 304; "Ukase," II, 139, 143; unionism, I, 5, 6, 152, 177; II, 80, 99; valedictory in Congress, I, 382; weakness of his position on slavery, II, 268
Cushman, Caroline, I, 127; death, I, 129; journal and volumes on France and Spain, I, 113, 114; letters from Europe, I, 100
Cushing, J. N., I, 20, 21, 220; illness and death, II, 96; increasing family, I, 57; letters to his son on slavery question, I, 178, 179; on Clay and Tyler, I, 353; on the Oregon territory, II, 20, 21
Cushing, J. N., Jr., I, 58; II, 394
Cushing, Lydia, I, 23, 220; II, 31, 74
Cushing, Matthew, I, 19
Cushing, Peter, I, 21
Cushing, Philip, I, 58, 100, 245; II, 32
Cushing, Thomas, I, 24
Cushing, Judge William (1732–1810), I, 24
Cushing, William, I, 58; II, 22, 65, 385, 390
Cushman, H. W., II, 65

Dabney, Mr. and Mrs., I, 421
Daily bronotype, II, 46, 72, 73
Dalton, Tristram, I, 11
Daniel, P. V., II, 262
Danish language, I, 82
Danvers, I, 54
Davis, Bancroft, II, 324, 327, 333, 356
Davis, Captain, II, 59
Davis, Isaac, II, 65, 244
Davis, Jefferson, I, 7; II, 113, 138, 148, 190; in Boston in 1858, II, 223; Cushing's letter to, in 1861, II, 370, 371; president of the Con-

federacy, II, 275; sketch, II, 134; slavery position, II, 267
Davis, John, I, 139, 162, 165, 282, 283; II, 399–400; advice on politics, I, 179
Davis, J. W., I, 453
Dawes, H. H., II, 288
Deadlocks, II, 104, 253, 336
Debate, I, 83, 96, 395
De Ford, S. T., I, 364, 369; II, 419
Degree from Harvard, II, 125
Democratic Party: adherents from the Whigs, II, 225–226; attacks on, I, 227, 263; doctrines in 1837–41, I, 225; entrance into, I, 395; II, 14; first step toward, I, 327; Free Soilers and, II, 98, 101, 139; inefficiency, I, 222; leadership in Massachusetts, II, 95; Massachusetts in 1842, I, 374; Massachusetts Convention of 1847, II, 64; National Convention of 1852, II, 119; nomination of Cushing for Governor of Massachusetts, II, 65; slavery attitude, II, 106; Tammany Hall address July 5, 1858, II, 219; Whiggism and, I, 327; wreck on the slavery question, II, 261. *See also* Baltimore Convention; Charleston Convention
Democracy, I, 17; Whittier on, I, 206
Demosthenes, I, 83
Denmark, II, 162; claims on, I, 66
Deposit Postponement Bill, I, 225, 226, 227, 228
Derrick, W. S., I, 420
Dexter, Samuel, I, 63
Dexter, "Lord" Timothy, I, 10–11
Diary (Cushing's): extracts in 1829, I, 82; foreign journey in 1829, I, 91; legal work on return from Europe in 1830, I, 119; on Levi Lincoln, I, 64–65; relations with Webster, 1825, I, 62; resumption after European journey, I, 113
Dickens, Charles, I, 398
Dickinson, D. S., II, 114, 121
Dictionary errors, II, 402
Dinner of Aug. 28, 1840, I, 279
Diplomacy, I, 440, 454; Geneva arbitration, II, 306; Spanish, II, 381
Discipline, II, 44, 55, 58; mathematical class at Harvard, I, 38
Disraeli, Benjamin, II, 379
District of Columbia, slavery in, 177, 179, 182, 185, 186, 187, 240, 253, 255
Dix, J. A. (1798–1879), II, 128
Doane, Mrs. F. W., I, 220
Dobbin, J. C., II, 135
Dog case, II, 377
Douglas, S. A., I, 3, 4; II, 111, 120, 149, 227; Baltimore Convention and, II, 256; candidacy, II, 246; Charleston Convention and, II, 252; Lecompton Constitution, II, 157; Nebraska bill, II, 145
Dover Five Cent Savings Bank, II, 293
Dow, David, I, 20
Dow, Lydia, I, 20, 21, 22, 23
Dramatic projects, I, 98
Dred Scott decision, II, 153, 200, 202, 213
Dress, eccentricities, II, 417
Drinking. *See* Alcohol
Duane, W. J., I, 135, 137

Eames, Mrs., II, 189
Eastport, Me., I, 81
Education, I, 24; popular, I, 149; value to the orator, I, 85–86
Egypt, I, 424
El Pinal, I, 447
Eliot, S. A., I, 29, 30, 215
Emancipation Proclamation, II, 288
Embargo Act, I, 13, 22
Emerson, G. B., I, 29, 39
Emerson, R. W., II, 196, 300
Emigrant Aid Society, II, 150
Eminent Domain, II, 184
England, I, 112; American Mission in, I, 399, 409–410. *See also* Great Britain
Epitaph, II, 414
Equality of the states, II, 153
Era of good feeling, II, 138
Erysipelas, II, 392
Essex County, Mass., I, 12
Essex Junto, I, 11
Essex North Congressional District, I, 72, 122, 374
Essex Register, I, 76
Eugenia (ship), I, 448
Europe, I, 88; plan of voyage to, I, 89; results of trip of 1829–30, I, 117; tour, I, 100
Evarts, W. M., I, 4; II, 325, 334, 339, 342, 388
Everett, A. H., I, 109, 453; on Tyler's bank vetoes, I, 317

Everett, Edward, I, 26, 31; American Mission in England, I, 400; Amherst address, I, 163; Antimasons, I, 140; Boston *Journal* editorship, I, 63; on Cushing's History of Newburyport, I, 70; desire to have Cushing in Congress, I, 72; at Faneuil Hall, Dec. 8, 1859, II, 235; on finance in 1837, I, 235; on foreign travel, I, 88, 90; Governorship of Massachusetts, I, 162, 165, 167; Letter to Cushing, Jan. 4, 1836, on Webster's candidacy, I, 174; letter on Levi Lincoln and the judgeship, I, 217; on the Massachusetts resolutions, I, 242; Mission to China, I, 409, 410; praise for Cushing, I, 43; relations with Webster, I, 147; rest from public office, I, 276; as teacher at Harvard, I, 39
Everett, Horace, I, 375
Evidence, II, 411; admissibility and order in legal cases, I, 119
Erving, Thomas, I, 289, 297; banking recommendation, I, 299
Exchequer Bill, I, 340, 381
Executive department, I, 236
Executive and Legislative, I, 137, 324, 326, 351
Expansion, I, 245, 247
Extempore speaking, I, 34
Exterritoriality, I, 439, 443
Extradition, II, 386

Fairchild, John, I, 182
Faneuil Hall, I, 342, 361, II, 19; Bunker Hill dinner, I, 414; address of Cushing Oct. 27, 1857, II, 197; address of Jefferson Davis in 1858, II, 224; address on panic of 1857 and extravagance, II, 218; Mexican War meeting, II, 38; Union Meeting, Dec. 8, 1859, II, 235
Federal Street Church Case, II, 292
Federalism, I, 11, 16
Federalist Party, I, 16
Ferdinand VII, I, 107
Fifty-four forty, or fight, I, 23
Filibustering, II, 175
Fillmore, Millard, I, 381, 382; II, 97
Finances, public: Clay's measures, I, 318; condition of the country in 1835, I, 198; Tyler's plans, I, 340, 345; Van Buren's proposals in 1837, I, 224–225; Whig views in 1837, I, 235
Fine arts, II, 409
Fiscal Bank, I, 299, 301
Fish, Hamilton, II, 314, 331, 356
Fisheries Convention, II, 158
Fitzpatrick, Benjamin, II, 260
Flagstaff in Canton, I, 431
Flirtation, II, 419
Florida Treaty of 1819, II, 4
Florida (ship), II, 308, 340, 343
Floyd, J. B., II, 293
Foote, Charles, I, 253
Forbes, Consul, I, 425, 431
Foreign Affairs, committee on, I, 270, 296, 330; Adams and, I, 337
Foreign travel, I, 88
Forney, J. W., II, 161
Forsyth, Secretary, II, 7
Fort Sumter, II, 275
Forward, Walter, I, 340, 345, 362, 363, 384, 386, 387
Fourteenth Amendment, II, 367
Framingham, Mass., II, 148
France, I, 101; issue in 1836, I, 195
Franco-Prussian War, II, 305, 332
Free Soilers, II, 66, 95, 97, 98, 143; Democrats and, II, 139
Freedom of speech, I, 209, 358
Freeman, I, 251
Freeport doctrine, II, 156, 246
French, P. H., II, 177
French language, II, 333, 342
French Revolution of 1830, I, 116
Frisbie, Lewis, I, 26
Frothingham, Richard, II, 139
Frugality, II, 416
Fugitive Slave Law, II, 97, 108, 120; interpretation, II, 144

Gadsden Treaty, II, 162
Gag-rule, I, 188; Atherton and, I, 255; Patton's, I, 240, 242; Wise and, I, 268
Gaines, Myra C., II, 294
Gallatin, Albert, I, 341
Gannett, A. Y. P., II, 368
Gardner, H. J., II, 197, 198, 211
Garland, Rice, I, 185, 271
Garrison, J. H., I, 272, 274
Garrison, W. L., I, 6, 12, 29; attack on slavery, in Newburyport 1830, I, 151; Boston protests and mob, I, 178; campaign attack on Cushing in 1826, I, 78; ingratitude to Cush-

ing, I, 53; at Framingham, Mass., II, 148; letter asking favor in 1839, I, 272; letters with petitions, 1836–37, I, 207, 208; in the Newburyport *Herald*, I, 52; Northern feeling toward, I, 154; resolution of Anti-Slavery Society, I, 215; sketch, I, 52
Geneva, II, 333, 334, 345
Geneva arbitration, II, 306
Geneva Tribunal, II, 326, 328, 335, 355; appointments, II, 324, 325; Cushing's book on, II, 350
Geographical names, II, 403
George IV, I, 112
George, P. R., I, 295, 328, 368, 370, 385, 389; II, 32, 114, 115, 127
George Will Case, II, 293
Georgia resolutions, I, 148
German citizens, II, 289
German immigrants, II, 229, 231
Germany, I, 89
Ghent, Treaty of, I, 25
Gibraltar, I, 111, 422
Giddings, J. R., I, 357
Gilmer, T. W., I, 303; attack on J. Q. Adams, I, 334
Gladstone, W. E., I, 404; II, 308, 415
Glebe, The, II, 299
Goodrich, S. G., I, 283
Goodyear Case, II, 295
Gould, Hannah F., II, 414
Governorship, II, 65, 95
Granada, I, 111
Granary Burying Ground, Boston, I, 24
Granger, Francis, I, 201, 202
Grant, U. S., II, 299; inauguration, II, 303; relations with, II, 303
Graves-Cilley duel, I, 336
Great Britain: American feeling toward in 1839, I, 258; colonial policy, I, 320; II, 23; controversy with, in mid-nineteenth century, II, 158, 165; Cushing's dislike of, I, 7, 67, 113, 358; II, 25, 165; policy during the Civil War, II, 326; ships of war and American commerce, II, 308; sympathy with the South, II, 307
Greeley, Horace, I, 315; defeat in 1872,, II, 358; on Whig appointments, I, 337, 339
Grey Jacket (ship), II, 296
Grinnell, W. H., I, 315
Griswold & Green, I, 417
Guadalupe Hidalgo, II, 74, 302
Guthrie, James, II, 135, 244, 252, 253

Hackett, F. W., II, 329, 334, 343, 400
Haight, Mr., I, 230
Hale, J. P., II, 125
Hall, Judge D. A., I, 380
Hallett, B. F., II, 66, 95, 107, 119
Halstead, Murat, II, 247, 248, 260
Hamilton, J. A., I, 93
Hamlin, Hannibal, II, 148
Happiness, I, 33
Hardin, Ben, I, 193, 195
Hardingham, Eng., I, 19
Harlan's Washington *Chronicle*, II, 366
Haro, Francisco de, II, 292
Harper, Emily, II, 189
Harper's Ferry, II, 235
Harper's Weekly, II, 353, 355, 378, 385
Harris, J. H., I, 78
Harrisburg Convention of Antimasons in 1835, I, 173
Harrison, W. H., I, 173, 174, 176; cabinet, I, 280; cabinet appointments, I, 288; campaign for, I, 277; Eulogy on I, 292; illness and death, I, 289; relations with, I, 287, 291; Whig nomination in 1839, I, 277
Harrold, J. A., II, 420
Hart, Mr., I, 260
Harvard College, I, 24; buildings and faculty in 1813, I, 26; Commencement of 1817, 30, 35; course of study, I, 26; Cushing name at, I, 24; election of overseers, II, 105; license and brutality, I, 28; Master's degree, I, 46; Mathematical tutorship, I, 37; sixtieth anniversary class dinner, II, 389, societies and friendships, I, 31
Harvard Law School, I, 35
Harvey, Sir John, I, 257
Harvey, Peter, II, 233
Haskell, Solomon, II, 96
Haverhill, Mass., II, 262
Haverhill *Gazette*, I, 124
Haverhill *Iris*, I, 129, 133, 150
Haverhill Petition, I, 334, 336
Hawthorne, Nathaniel, I, 12; II, 397, 412

Hay fever, 86, 88, 91
Hayes, R. B., II, 386, 388
Haynes, Israel, II, 104
Hayti, article on, I, 40
Hazen, N. W., II, 110
Health, I, 56, 66, 86–87, 131, 132, 148, 244; II, 127, 187, 391, 397
Hemorrhage from the lungs, I, 148, 149
Hertz, Henry, II, 169, 171
Hesper (ship), I, 22
Higher law, II, 240
Hill, Isaac, I, 342
History, I, 116
History and Present State of the Town of Newburyport, I, 69
Hoadley, J. C., II, 212
Hoar, G. F., I, 4; II, 108
Hoar, Samuel, I, 181
Holland, I, 100
Holmes, O. W., II, 300
Honduras, II, 159, 176
Honkong, I, 405
Hooper, Stephen, I, 12
Hooper, Mrs. Susan, I, 57
Horses, II, 401
House of Representatives Rule "Number 21," I, 269. *See also* Congress
Houston, Sam, II, 5, 9, 12, 17
Hudson's Bay Co., II, 297
Hülsemann letter, II, 162
Hunkers, II, 107
Hunt, Memucan, II, 7
Hunt, William, I, 57
Hunter, R. M. T., I, 262; II, 126
Hyannis, Mass., II, 236
Hymn compound in 1835, II, 407
Hypochondria, I, 57

Illinois land, II, 86
Immigrants, II, 229, 231, 232
Impending Crisis, II, 245
Imperialism, II, 159, 194
Independence, I, 252; II, 414
Independent Treasury, I, 222-223, 225, 226, 228, 229, 236, 262, 264, 266, 286, 297, 299
Indians, I, 215
Inflation, I, 198
Ingersoll, J. R., I, 183
Inspiration, II, 406, 408
Intelligencer, I, 343
International law, II, 167, 282, 285, 296
Intoxicating liquors, II, 291
Invilliers, Mme, d', I, 105
Ipswich, Mass., I, 62, 65
Irish citizens, II, 289
Irish immigrants, II, 229, 231
Ironclads at Liverpool, II, 310
Irving, Washington, I, 111, 114, 398
Irwin, W. W., I, 303, 362, 391
Isthmian canal, II, 301
Itajuba, Baron d', II, 324
Italian dictionary, I, 81
Iturbide, Colonel, II, 4

Jackman, Stephen, Jr., I, 22
Jackson, Andrew, I, 61; antagonism to, I, 73; eulogy, II, 232; Harvard University and, I, 148; inauguration, I, 92; interview, I, 93; New Orleans in 1815, I, 380; opposition in New England, I, 121, 134, 135; oration in praise of, I, 380; philippic against, I, 136; Specie Circular, I, 198
Jackson, Francis, II, 212
Jackson, Jonathan, I, 12
Jacksonism, I, 279
Jalapa, II, 57
James, C. T., II, 290
James Gray (ship), II, 270, 366
James (ship), I, 95, 96
Japan, Perry's Treaty with, II, 162
Jefferson, Thomas, I, 16, 71
Johnson, Elizabeth, I, 22
Johnson, Henry, I, 159, 367
Johnson, Reverdy, II, 313
Johnson, W. Cost, I, 269
Johnson, Wm. C., II, 291
Johnson-Clarendon Convention, II, 313, 315
Jones, Columbus, II, 236
Journal of Commerce, I, 233
Journalism, I, 63
Judgeship, II, 108
Judiciary, reform plan, II, 180

Kane, E. K., I, 416
Kane, Judge, II, 169, 171
Kansas, II, 150, 246
Kansas-Nebraska Act, II, 145, 149, 158, 200, 202
Kearny, Lawrence, I, 406
Kearsarge (ship), II, 310
Kelly, Thomas, II, 377
Kent, Joseph, I, 279
Kidnapping case, II, 236

King, Rufus, I, 12
Kinsman, H. W., I, 231, 373
Kirkland, J. T., I, 25, 31, 37
Kittridge, Dr. Joseph, I, 124, 127, 128, 132
Kiyeng, I, 428, 431, 433, 444; forged report, I, 441
Knap, Charles, I, 95
Knapp, Daniel, I, 347
Know Nothing Party, II, 197, 198, 228, 229
Knowledge, love of, I, 23, 30, 32, 55; II, 346, 404
Koszta, Martin, II, 161
Kotow, I. 417

Ladd, Nathaniel, I, 385
Lafayette, General, I, 56; in Paris, I, 101
Land settlement, I, 245, 247
Land speculation, I, 230
Lane, Gen. Joseph, II, 56, 261
Languages, I, 86; II, 406
Latin salutation, I, 30
Law, I, 34; practice, I, 51; II, 290, 411; Study of, I, 35, 36
Law books, presentation from college class, I, 47
Lawrence, Abbott, I, 169, 181; II, 39
Lawrence, Amos, II, 126
Layard, Sir Henry, II, 382, 402
Lecompton Constitution, II, 156
Lectures, I, 149, 203, 260, 452; II, 19, 208, 219, 410. *See also* Addresses
Lee, R. E., I, 4; II, 235
Legislature. *See under* Massachusetts
Legislature and Executive, I, 137, 324, 326, 351
Lester, C. E., II, 160
Letters from Cushing to: Barnard, D. D., April 17, 1841, I, 293; Blatchford, R. M., Feb. 3, 1856, II, 93; Bryant, W. C., Jan. 5, 1856, II, 92; Cushing, J. N., May 30, 1829, I, 95; Sept. 15, 1829, I, 104; in 1847, II, 41, 42; May 3, 1847, II, 49; Cushing, Mrs. J. N., Nov. 11, 1816, I, 32; May 4, 1821, I, 44; Feb., 1833, I, 131; Dec. 5, 1835, I, 180; Cushing, Philip, July 11, 1829, I, 100; Jan. 23, 1830, I, 110; Everett, Edward, Nov., 1831, I, 125; Frothingham, Richard, Sept. 29, 1853, II, 139, 141; Gale and Seaton, April 4, 1842, I, 343; Grant, withdrawing his name as Chief Justice in 1874, II, 373; Harrison, W. H., Nov. 28, 1840, I, 280; Knapp, Daniel, July 16, 1842, I, 347; Loring, G. B., in 1859, II, 238; Maine Democrats at Bangor, Jan. 11, 1860, II, 241; Niles, Mr., Oct. 3, 1831, I, 125; Oct. 31, 1831, I, 134; Parsons, Theophilus, on Webster and the Presidency, I, 200; Pendleton, J. S., April 21, 1841, I, 292; Pierce, Franklin, Oct. 2, 1858, II, 226; May 23, 1859, II, 233; Polk, J. K., June 1, 1847, II, 48; Prescott, W. H., Jan. 1, 1848, II, 61; Reynolds, T. C., Nov. 26, 1853, II, 141; Sewall, S. E., Jan. 30, 1836, I, 185; Snowden, Edgar, Oct. 8, 1841, I, 325; Taylor, Zachary, May 4, 1847, II, 44; Tyler, John, on China, Dec. 27, 1842, I, 407; unnamed correspondent July 12, 1821, I, 38; Webster, Daniel, Nov. 11, 1830, I, 68; Jan. 24, 1834, I, 135; Aug. 9 and 10, 1834, I, 146, 147; in Jan., 1835, I, 168, 169, 170; in 1835 in the interests of Everett, I, 171; Whittier, J. G., April 18, 1837, I, 214
Letters to Cushing from: Adams, John, in 1821, I, 46; Bancroft, George, June, 1827, I, 89; Burr, S. J., Oct. 19, 1842, I, 371; Cushing, J. N., on slavery I, 178, 179; Everett, A. H., Nov. 16, 1841, I, 317; Everett, Edward, Oct. 6, 1826, I, 70; Jan. 12, 1835, I, 163; Jan. 4, 1836, I, 174; Sept. 17, 1837, I, 235; in 1837–40, I, 275, 276; Aug., Sept. and Oct., 1842, from London, I, 400, 401; Garrison, W. L., with petitions, 1836–37, I, 207, 208; in 1839, I, 272, 273; Goodrich, S. G., Jan. 28, 1841, I, 283; Greeley, Horace, Sept. 8, 1841, I, 315; Dec. 17 and 29, 1841, I, 337, 339; Pierce, Franklin, Nov. 4, 1857, II, 204; Polk, J. K., April, 1847, II, 48; Proffit, G. H., I, 392; Tyler, John, Oct. 20, 1842, I, 371; April 24, 1843, I, 389; Nov. 7, 1847, II, 63; Webster, Daniel, Feb. 17,

1834, I, 145; Aug. 13, 1834, I, 147; Mar. 5 and Dec. 6, 1835, I, 171–172; April, 1837, I, 231, 232; Mar. 29, 1843, I, 391; Jan. 4, 1845, II, 12; Whittier, J. G., May 7, 1833, I, 133; on slavery, in 1834, I, 154, 155, 156; on the right of petition, etc., in 1836, I, 204, 205, 207; on slavery and the right of petition, Mar. 13 and April 4, 1837, I, 212, 213; Oct. 10, 1837, I, 237; Jan. 15 and 22, 1838, I, 241, 242; July 3, 1838, I, 250; Jan. 1839, I, 256; Sept. 1839, I, 274; Jan. 6, 1841, I, 282; Feb. 8 and 24, 1841, I, 284, 285; Aug. 8, 1841, I, 356; Aug. 30, 1841, I, 309; Wilde, S. S., in 1836, on slavery, I, 189; Dec. 26, 1837 (and later), I, 242, 243; Sept. 4, 1841, I, 308; Winthrop, R. C., Feb. 25, 1835, I, 201
Liberator, I, 35, 52, 151, 176, 177
Liberia, I, 152
Liberty Party, II, 10
Library, private, II, 409
Life, II, 421
Life and Writings of Sir Edward Coke, I, 42
Limesi, Ralf de, I, 19
Lincoln, Abraham, II, 34, 156, 246; death, II, 298; election in 1860, II, 268; inauguration, II, 275; nomination, II, 255; relations with, II, 279, 282; suggestion that he withdraw, II, 272; support of his administration, II, 282; wise and conciliatory attitude toward Cushing in 1861, II, 277
Lincoln, Levi, I, 64, 65, 249, 282, 283; II, 235; advocated for Supreme Court of Massachusetts, I, 216; Massachusetts resolutions, I, 143
Liquor. *See* Alcohol
Literary projects, I, 97
Literature, II, 406; earliest attempts, I, 40; style in 1821, I, 42
Little, Silas, I, 85
Liverpool, II, 310
Livingston's *Penal Code*, I, 54
Locofocos, I, 226, 227
London *Daily Telegraph*, on the American "Case," II, 327–328
London *Times*, II, 160, 171; on the *Alabama* claims, II, 311
Loring, E. G., II, 211
Loring, G. B., I, 14; II, 238, 395
Lowell, J. R., II, 388; antagonism to Cushing, II, 299; in the *Atlantic Monthly* on Cushing, II, 221; relations with, II, 73; Satirization of Cushing, II, 68
Lowell, Judge John, I, 12, 53
Lumpkin, J. H., I, 153
Lunt, George, II, 395
Lynn, Mass., Masonic address in 1826, I, 71
Lyons, James, I, 301

Macao, I, 425, 427, 436, 443
McClelland, Robert, II, 135, 144, 196, 197
McGuire, John, II, 291
McKean, Joseph, I, 26
Mackintosh, R. L., I, 416
McLeod, Alexander, I, 319
Macon, Nathaniel, II, 268
Madison, James, I, 186
Madrid, I, 107; II, 379, 386; life in 1874–75, II, 382
Maine, I, 218; boundary, I, 218, 222, 247–248, 257; Democratic meeting of Jan. 11, 1860, II, 241; Governor Kent, I, 279, 280
Mallory, Frank, I, 303
Malta, I, 422, 423
Manchu language, I, 426
Mansur, Joseph, I, 370, 373, 385, 393
March, C. W., I, 363, 366; II, 53
Marcy, W. L., I, 295; II, 114, 118, 120, 128, 135, 136, 161, 196; personality, II, 134
Maria Christina of Naples, I, 108
Marshall, Congressman, I, 334
Marshfield, Mass., I, 234; II, 83, 91
Marston, S. W., I, 123, 124
Mason, J. Y., I, 182
Mason, Jeremiah, I, 97, 170, 171
Mason and Slidell case, II, 282, 286
Masonry, I, 138
Massachusetts, I, 9; Governorship, I, 162, 165, 167; laws, I, 54; legislature, I, 61, 131; II, 209, 210, 216–217, 288, 289; Mexican War regiment, II, 34, 36, 39, 78, 83; Personal Liberty Law, II, 211, 214, 216, 229; political situation in 1847, II, 64; resolutions, 1838, I, 240, 241, 242; Senate, I, 66; slavery position, I, 210; Supreme

Court, II, 108; Supreme Court vacancy, I, 216; Whigs, I, 362; II, 68, 72
Massachusetts Anti-Slavery Society, II, 212; resolution of gratitude, I, 215
Massachusetts *Reports*, II, 109
Master's Degree, I, 46
Matamoros, II, 28, 30, 42, 43, 44
Mathematics, teaching at Harvard, I, 37
Maury (ship), II, 172
May, S. J., I, 28, 35
Maynard, Thomas, I, 110
Mayoralty, II, 106, 108
Meade, R. W., II, 293
Memoir on the Subject of British Enlistments in the United States, II, 175
Memory, II, 400
Meriwether, Congressman, I, 377
Merrill, John, I, 120, 122, 123
Mexican War, II, 28; attitude, II, 29
Mexico, I, 446; acquisitions from, II, 82; annexation advocated, II, 225; belligerency, II, 27; boundary with, I, 197; character of people, I, 448; claims and commission in 1868, II, 302; Prescott's History, II, 61; report on, I, 448; treaty with Texas, II, 17
Mexico City, II, 56, 60, 74
Michigan statehood, I, 190
Military ambitions, I, 248; II, 33, 36
Miller's *Memoirs*, I, 94
Mineralogy, I, 32, 450
Missouri (ship), I, 415, 421, 422; burning of, I, 423
Missouri Compromise, I, 40, 176; II, 145, 154, 199
Mobile, Ala., II, 40, 42
Mohammed Ali, I, 424
Money matters, I, 230, 235; II, 82, 417
Monroe, James, I, 30, 61
Monterey, II, 30, 51
Montreal, I, 222
Moral issues, II, 266
Morgan, William, I, 138
Morgan breed, II, 401
Morpeth, Lord, I, 336
Morrill family, I, 58
Morre, Mr., I, 25
Morton, Marcus, I, 167, 374; II 95, 215; election, I, 275
Morton, Dr. W. G., II, 183
Moseley, Ebenezer, I, 36
Motley, J. L., II, 316, 319
Mount Vernon, II, 234
Musical instruments, Chinese, II, 401

Nanking, Treaty of, I, 405, 406
Nassau, I, 357
National Bank, I, 297
National Democrats, II, 107
National Life Insurance Co., II, 296
National Republicans, I, 73, 122, 123, 134
Nationalization, II, 229, 231
Naturalized citizens, II, 289
Nature study, I, 33, 50
Navy, I, 195, 196, 358; discharge from, I, 272, 274
Navy-yard at Charlestown, I, 193
Nebraska, II, 145, 150
Negroes, I, 4; capacities, I, 41; colonization project, I, 153; troops, II, 288. *See also* Slavery
Nelson, Jeremiah, I, 130, 132
Nelson, Mrs. Jeremiah, I, 158
Neutrality, II, 165, 167, 283, 312, 317
New Brunswick, I, 248, 259
New England, I, 86–87, 88, 211; II, 72
New England Antislavery Society, I, 176
New Jersey, disputed seats in Congress, I, 261
New Orleans, II, 40, 41; Gaines Case, II, 294
New Orleans, battle of, I, 25
New York, I, 81, 119; Custom House investigation, I, 355; election riots, II, 304
New York *Evening Post*, II, 91
New York *Herald*, I, 310; II, 129, 130, 131, 233, 359; on Cushing's book on the Geneva Tribunal, II, 352; unpublished communication of Cushing in 1841, I, 310
New York *Morning Telegraph*, II. 26, 27
New York *Tribune*, II, 53, 129, 220, 348
Newburyport, I, 9; Adams' visit in 1837, I, 219, 220; character, I, 10; city charter and mayoralty, II, 106; conditions in 1821 on Cushing's return from Cambridge, I, 50; custom house, I, 249; dinner to

Cushing, Aug. 28, 1840, I, 279; foremost citizen, I, 14; great fire, I, 13; Independence Day address in 1821, I, 46; Market Hall meeting, Oct. 27, 1842, I, 372; ovation to Cushing on his return in 1857, II, 194; patriotic meeting in April, 1861, II, 275; reception and address in 1842, I, 365; retirement to, in 1877, II, 391; return to from Cambridge teaching, I, 49; Town Hall cornerstone, II, 98; reverses, I, 12; shipping, I, 10, 13; size and importance, I, 11, 12; society, I, 12; welcome after the Mexican War, II, 79
Newburyport *Advertiser*, I, 125
Newburyport *Free Press*, I, 78
Newburyport *Herald*, I, 22, 37, 116; editorials on slavery, I, 51; Everett campaign for Governor, I, 167
Newburyport Light Infantry, I, 56
Niagara Falls, I, 81, 222, 248
Nicaragua, II, 176
Nikolai (ship), I, 95
Niles, Mr., I, 125, 134
Niles *Register*, I, 157
Nineveh, II, 402
North, introducing slavery into, I, 192
North American Review, I, 39–40; Cushing's articles, I, 42, 54, 80, 97
Northeastern boundary question, I, 218, 222, 247–248, 322, 359; denunciation of English foreign policy, I, 257
Northwest Territory, II, 31
Norton, Andrews, I, 26, 31, 37, 48
Nullification, I, 151
Nye, Gideon, I, 403

O'Donnell, J. H., I, 416
Oedipus, I, 98
Official Opinions, etc., II, 179
Oliver, H. K., I, 28
On Maritime Contracts of Letting to Hire, I, 43
Open ports of China, I, 405, 408, 438
Opinion Concerning British Recruitment in the United States, II, 167, 168, 169
Opium trade, I, 270
Opium War, I, 404
Orations. *See* Addresses
Oratory, I, 99, 379; college experiences, I, 34; a power for good, I, 47; taste in 1836, I, 191
Order, love of, II, 399
Oregon question, I, 247
Oregon territory, II, 19; Boston Lyceum address on, II, 23, 25
Oregon Treaty, II, 26; claims under, II, 297
Oriental (ship), I, 423
Orr, H. E., II, 178
Orr, J. L., II, 220
Osgood, G. P., I, 120, 122, 123, 124, 128, 132, 133, 150, 158, 207, 280; election to Congress, I, 134; Whittier's opinion, I, 254
Ostend Manifesto, II, 164
Otis, George, I, 81
Outlines of the Life, . . . of William Henry Harrison, I. 277

Paine, R. T., I, 12
Palfrey, J. G., I, 28; editorship of *North American Review*, I, 80
Palmer, Sir Rovindell, II, 337, 339, 341, 347
Palmetto flag, II, 367
Palo Alto, II, 30
Panama, II, 301
Panic of 1837, I, 222
Panic of 1857, II, 218
Paris, I, 100, 103, 112; II, 330, 332, 348
Parker, Commodore, I, 430, 434
Parker, Isaac, I, 25
Parker, Peter, I, 403, 405, 416, 427, 428, 429, 430, 435
Parker, Theodore, II, 38, 105, 161
Parmelee, W. L., I, 294
Parsons, Theophilus, I, 11; Webster and the Presidency, I, 199
Partisanship, II, 376
Partnership, II, 296
Party allegiance, II, 415
Patriotism, I, 320; II, 25, 33, 281
Patronage, I, 376, 377; II, 148
Patton, Congressman, I, 240, 242
Paulding, Secretary, I, 273
Peking, I, 418, 425, 428, 437
Pendleton, J. S., I, 292
Perier, Madame, I, 102
Perkins, E. S., II, 169, 171
Perkins, T. H., I, 404
Perry, Commodore, II, 162; naval victory at Lake Erie, I, 25

Perry (ship), 433, 438, 444, 445, 446
Personal Liberty Law, II, 211, 214, 216, 229
Peru, I, 54, 55
Peters, J. R., I, 416
Petition, right of, I, 184, 188, 204, 238; Massachusetts and, I, 269; Massachusetts resolutions, I, 240, 241, 242
Phi Beta Kappa, I, 30; address in 1839, I, 260; poem in 1819, I, 37
Philadelphia, I, 20, 35, 93, 250, 251
Phillips, S. C., II, 95, 101
Phillips, Wendall, I, 453; II, 213, 263; abuse of Cushing, II, 47
Pickens, F. W., I, 229, 267, 270, 377; II, 273
Pickering, Timothy, I, 17
Pierce, Benjamin, II, 129
Pierce, Franklin, I, 181; II, 111–112, 116, 118; administration, II, 137; administration, real temper, II, 143; Bancroft's opinion of, II, 192; cabinet, II, 126, 127, 129, 131, 134; foreign policy, II, 158, 162; inaugural address, II, 134; messages and proclamation on Kansas, II, 151; nomination, II, 122, 123; opinion of Cushing, II, 412; personality, II, 132; reception of nomination news, II, 123; slavery as chief issue of administration, II, 149
Pillow, G. J., II, 75, 77, 113, 116
Pinckney, H. L., resolutions, I, 186, 187
Pitcher, Nazareth, I, 19
Poe, E. A., II, 19
Poetry. *See* verse
Poinsett, J. R., II, 4
Polk, J. K., I, 181, 224; cabinet, II, 18; inauguration, II, 17; letter to Cushing on commission as Brigadier General, II, 48; Mexican policy, II, 27, 28; nomination, II, 10; on Oregon, II, 22, 23; policies, II, 26
Popkin, J. S., I, 26
Popular sovereignty, II, 150, 151, 245, 249, 250
Porter, Noah, II, 403
Postage Stamp Case, II, 293
Postmasters and incendiary literature, II, 185
Pothier, R. J., I, 43, 106
Pottinger, Sir Henry, I, 425, 431
Preparedness, military, I, 196, 198, 358, 359
Prescott, W. H., I, 28; II, 61
Presidential campaign of 1860, II, 268
Price, R. M., I, 421
Proffit, G. H., I, 303, 377, 379, 392
Prohibition of intoxicating liquors, II, 292
Proscription, II, 143
Protective tariff, I, 67–68, 203, 348; Compromise Bill of 1833, I, 346; Little Tariff, of 1842, I, 347, 349
Protestant Episcopal Church, II, 420
Providence, R. I., I, 92
Public lands, I, 198, 247, 318, 354
Puget Sound Agriculture Co., II, 297
Punctuality, II, 400
Puritans, II, 208, 219
Putnam, Oliver, I, 64, 68

Quincy, Josiah (1772–1864): on a college scandal, I, 48, 49; as president of Harvard College, I, 84
Quitman, Mr., II, 176

Race question, II, 230, 232
Raleigh letter of Henry Clay, II, 10
Rantoul, Robert, I, 12, 51, 367; Cushing's opinion of, I, 86
Rantoul, Robert, Jr., II, 40, 65, 120
Reed, W. B., I, 454
Reeder, A. H., II, 151
Religion, II, 420; accusations against Cushing, and his reply, I, 125
Reminiscences of Spain, etc., I, 114
Republican Party, I, 176; II, 149, 198; birth, II, 192; Cushing's opinion of, II, 207, 208, 219, 264; sympathy with, II, 279; victories in 1860, II, 268
Resaca de la Palma, II, 30
Review, Historical and Political of the Late Revolution in France, I, 116
Reynolds, T. C., II, 141
Rhett, R. B., I, 334, 336
Rhodes, J. F., II, 327
Richmond, Va., II, 18, 224, 254, 256
Rio Grande, II, 27, 42, 54
Ripley, George, I, 38
Ripon, Wis., II, 149
Rives, W. C., I, 304
Roberts, Edward, I, 403
Robinson, J. P., I, 369, 373; II, 67

Rock, J. S., II, 190
Rock Island property, II, 86
Rockwell, Julius, II, 217
Rolfe, H. P., II, 119
Roosevelt, Theodore, I, 118, 359; II, 47
Rose, John, II, 297, 319
Rotterdam, I, 100
Rowan, Archibald, II, 371
Rum and molasses, I, 28
Rusk, T. J., II, 17
Russell, Lord John, II, 307, 309, 312

Sabbath, II, 105
Sabiniti, II, 54
St. Louis (ship), 433, 438
Salem, Mass., I, 12
Salisbury, Mass., I, 18, 20; II, 281
Salisbury, Stephen, I, 29, 35; II, 395
Salisbury Beach, II, 390
Saltillo, II, 54
Saltonstall, Nathaniel, I, 279
Samchou, I, 427
San Domingo, II, 321
San Jacinto, II, 5
San Jacinto (ship), II, 282
Sargent, A. A., II, 370, 372
Saxe, J. G., II, 208
Scholar and world, I, 118
Scholar-statesman, II, 411
School days, I, 23
Science, I, 32; II, 409
Sclopis, Frederic, II, 324, 335, 337, 338, 341, 344
Scott, Dred, II, 154
Scott, Winfield, II, 30, 50, 56, 60, 125; accusations against officers, II, 75
Seabrook's Island, II, 184
Secession, defense of, II, 265, 267, 269, 272
Self-government, II, 150
Semmes, Raphael, II, 309
Senate, U. S., biographies, I, 149
Senatorship, U. S., Whittier's advice to seek, I, 282
Sergeant, John, I, 304; Fiscal Bank Bill, I, 305
Seville, I, 109
Sewall, S. E., I, 29, 35, 59; II, 395; correspondence, 1836, I, 135, 136; on law study, I, 36
Seward, W. H., II, 286
Seymour, T. H., II, 117, 245
Shannon, Governor, II, 153
Shaw, Lemuel, II, 109
Shaw, Samuel, I, 403
Shenandoah (ship), II, 310, 343
Sickles, D. E., II, 360, 362, 379
Silsbee, Nathaniel, I, 162, 165
Slade, William, I, 183, 240, 243
Slanders, II, 68, 91–92, 103
Slave trade, I, 18
Slavery, I, 4, 6, 18; controversy of 1836, I, 186, 188; Cushing's first contribution, I, 40; Cushing's position, I, 150, 176, 186, 193, 210–211, 252, 395; II, 79, 153, 158, 203, 236, 240, 266, 268; Democratic Party attitude, II, 106; editorials in Newburyport *Herald*, I, 51; in Massachusetts, I, 206; Massachusetts opinion, I, 210; Massachusetts resolutions in 1838, I, 240, 241, 242; petition in Congress against, I, 182, 209, 210; seriousness of the controversy, I, 182; Southern change of view, II, 267
Slaves, petitions from, I, 209, 210
Slidell, John, II, 27, 282
Smalley, G. W., II, 348
Smith, Justin H., II, 8
Smith, Theodore Clark, I, 5
Snow, Samuel, I, 404
Snowden, Edgar, I, 325
Sonnet to a lady, II, 407
Sonora (ship), II, 309
Soulé, Pierre, II, 163, 164
South Carolina, I, 151, 157; II, 272; eulogy of, II, 220; mission of Cushing on eve of secession, II, 273; ordinance dissolving the Union, II, 274
Southerners, II, 156, 190, 205, 223, 238; Cushing's "farthest South," II, 241; slavery opinion, II, 267; sympathy with, II, 264
Spain, I, 104; American claims against, I, 196; II, 293, 304; American colonies, II, 4; diplomacy, II, 381; journey to, I, 106; mission to, II, 363, 379; odd customs, I, 110; poverty and riches, I, 108; relations with, under Grant, II, 360; relations with, under Pierce, II, 162; treaty with in 1876–77, II, 386
Spanish language, II, 292
Sparks, Jared, I, 28, 54, 80
Speakership of the House, I, 294
Specie payments, I, 222, 237

Speeches. *See* Addresses
Spencer, J. C., I, 388
Spofford, R. S., II, 190
Spot Resolutions, II, 34
Springfield, Mass., address on slavery, I, 260, 320
Staempli, Jacques, II, 324, 340
Stanton, H. B., I, 238, 252
Star of the West (ship), II, 177
State banks, I, 267
State Rights, I, 290; II, 184; Tyler and, I, 291, 300
Statute laws of the United States, revision, II, 298
Stevens, Oliver, II, 244, 259
Stewart, Sir Patrick, I, 423
Stomach trouble, I, 57
Stone, E. F., II, 290
Story, Joseph, I, 43, 65
Stowe, Harriet B., II, 153
Stowell, Lord, I, 43
Strong, Caleb, I, 17
Stuart, J. W., II, 6
Stubs, II, 405
Study of Civil Law (article), I, 40
Style, literary, I, 67, 114; II, 406
Sub-Treasury. *See* Independent Treasury
Suez, I, 424
Sullivan, Richard, I, 44
Sullivan, William, I, 44
Summary of the Practical Principles of Political Economy, I, 67, 68
Sumner, Charles, I, 4; II, 38, 66, 101, 102, 298, 299, 300, 301; on our claims against Great Britain, II, 315; *Crime against Kansas*, II, 157; Cushing's opposition to, II, 102, 104; on Cushing's nomination as Chief Justice, II, 369; election to Senate, II, 104; on imperialism, II, 161; relations with Grant, II, 321; ultimatum about Great Britain, II, 321
Sumter, Fort, II, 275
Supreme Court, II, 261; Chief Justiceship, II, 363; judges, II, 180
Swartwout, Samuel, I, 259
Swett, Horatio, I, 110
Switzerland, II, 346
Sword, presentation, II, 40
System, II, 399

Taggard, William, I, 362
Tammany Hall, II, 219
Taney, R. B., I, 135; II, 154, 363
Tariff. *See* Protective tariff
Tax on banks, II, 296
Taxation, state, I, 83
Taylor, Zachary, II, 27; commendation of Cushing, II, 45; election as President, II, 97; mentioned for Presidency, II, 52; Mexican War victories, II, 30; relations with, II, 51–52, 53
Teaching, I, 37
Temperaments, I, 87
Temperance, II, 391, 398
Tendency to a Perfect Philosophy (oration), I, 34–35
Tenterden, Lord, II, 324, 335, 337
Testimony, II, 217
Texas, I, 197; annexation discussion, I, 237; II, 3, 6; joint resolution for annexation, II, 15; petitions against annexation, I, 238, 239; slavery in, II, 5, 6, 9; Tyler's position, II, 8, 15
Thayer, Eli, II, 150
Thomas, J. A., II, 115, 118
Thompson, George, I, 178
Thompson, Waddy, Jr., I, 181, 209
Thornton, Sr Edward, II, 322, 355
Tippecanoe, I, 278, 280
To My Constituents, I, 322
Tod, David, II, 259
Todd, Francis, I, 151
Topeka, II, 151
Tracy, Nathaniel, I, 12
Travel, early, I, 15
Treasury, I, 266; surplus distribution, I, 198. *See also* Independent Treasury
Treasury Note Bill, I, 263
Treasury Notes, I, 225, 226, 228, 263, 382
Treasury, Secretaryship, I, 362; Cushing rejected, I, 384, 387, 388
Treaty of Washington, The, II, 350
Tremont House dinner, 1843, I, 415
Trent affair, II, 282
Trist, N. P., II, 18, 74
Tsiyeng Paou. *See* Kiyeng
Tucker, Beverly, I, 295, 300
Tudor, William, 40
Tupac Amaru, I, 54
Turner, Nat, I, 176
Twain, Mark, I, 42; II, 85
Tweed, W. M., II, 383, 386
Twenty-fifth Congress, I, 236
Twenty-fourth Congress, I, 181

Twenty-sixth Congress, I, 260
Twenty-seventh Congress, I, 330, 375
Tyler, John, I, 277, 290; accession to Presidency, I, 290; allegiance to, I, 298; cabinet, I, 375; cabinet resignations, I, 313, 324; financial measures, I, 340, 345; history of administration contemplated, II, 206, 207; impeachment, I, 380; relations with, I, 301–302, 322, 350, 351, 360, 371, 389, 398, 449; relations with Clay, I, 296, 301, 315, 317; revolt against, I, 313, 314; second cabinet, I, 316; State Rights, I, 290, 291; Tariff vetoes, I, 347, 352; on Texas annexation, II, 8, 15; veto of banking measure, I, 300; veto of second banking measure, I, 306; Webster and, I, 312; Wise, H. A., on the administration, I, 394
Tyler, John, Jr., I, 313, 347; II, 206
Tyler, L. G., I, 310
Tyler Whigs, group of, I, 302, 303, 304
Tyrig, S. H., I, 29
Typhus fever, I, 56

"Ukase," II, 139, 143
Uncle Tom's Cabin, II, 153
Underwood, Congressman, I, 245, 355
Union, II, 79; adherence to, in 1861, II, 275; preservation of, II, 220, 239, 240, 241, 269
Unionism, I, 152, 177; II, 80, 99
U. S. Commissioners, II, 211
United States Democratic Review, II, 225
United States Literary Gazette, I, 55, 68
U. S. Marshals, II, 144
Universalists, I, 81
Upshur, A. B., II, 8, 10

Van Buren, Martin, I, 93, 170; inauguration, I, 216; nomination for Presidency, I, 173; opposition to, I, 263; renomination in 1839, I, 277; special session of Congress, Sept., 1837, I, 222, 224; Whig opposition, I, 236; White House gold plate, I, 271
Van Dyke, J. C., II, 169, 170, 171
Van Ness, C. P., I, 109
Varnum, John (1778–1836), I, 73, 75, 76, 120; with Cushing in Washington, I, 94
Vera Cruz, I, 448, II, 30, 55
Vermont, II, 271
Verse, II, 396, 406; in Madrid society, II, 388; to Mary Buckminster, I, 45; ode on the deaths of Adams and Jefferson, I, 71, 72; quality, I, 72; Spanish translations, I, 115
Vesey's Chancery Reports, I, 62
Veto power, I, 324
Vetoes, overriding the Executive, I, 352, 354
View of the Anthracite Coal Trade of Pennsylvania, I, 203
Virginia, I, 290; II, 238; removal to, II, 299; votes for Pierce, II, 122
Virginius affair, II, 360, 380

Waite, E. T., II, 329
Waite, M. R., II, 325, 334, 342, 376
Walker, James, I, 28
Walker, Mr., of Alabama, II, 250
Walker, William, II, 175, 176
Walsh, Michael, I, 24
Wang Hiya Treaty, I, 434, 438, 440, 444; ratification, 448; Tyler and, I, 442
War, J. R. Lowell on, II, 70
Ware, Dr. John, I, 148
Warland, Mr., I, 29
Washington, D. C., I, 91, 93; at Mr. Hart's, I, 260; interview with President Jackson, I, 93; law practice in 1873, II, 358; residence in 1835, I, 180; social life, I, 199; II, 14, 188
Washington, George, II, 234
Washington, Treaty of, 1871, II, 322
Washington *Chronicle*, II, 366, 375; publication of forged letter of Cushing's, II, 370
Washington *Union*, II, 137, 146, 148, 149
Watrous, Judge, II, 218
Weathervane in Canton, I, 431
Webber, Samuel, I, 25
Webster, Daniel, I, vii, 3, 4, 25, 34, 42, 43; American Mission at Court of St. James, I, 399, 409–410; Bank of the United States, I, 135; Bunker Hill address, I, 414; on the currency, I, 342; at Cushing dinner in Newburyport in 1840, I, 279; Cushing's desire to make him President, I, 168; death, II, 91; dinner in memory of, Jan. 18, 1859,

II, 233; Faneuil Hall address Sept. 30, 1842, I, 342, 361; financial transactions with, I, 231, 234; II, 83; Fiscal Bank Bill, I, 305; letters to the Chinese Emperor, I, 419, 420; letters to Cushing Mar. 5 and Dec. 6, 1835, I, 171–172; *Plymouth Discourse*, I, 62; praise for, I, 62; Presidential chances in 1836, I 170, 174, 199, 203; proposed campaign for the Presidency in 1836, I, 145; relations with, I, 62, 144, 230, 302, 397; relations with Everett, I, 147; relations with Tyler, I, 312, 313; resignation as Senator, I, 283; as Secretary of State, I, 283, 287, 288; Seventh of March speech, II, 97; western lands, II, 85; western tour in 1837, I, 232, 233; Whig Party and, I, 327; withdrawal from office, May 8, 1843, I, 411
Webster, Edward, II, 35, 51, 75
Webster, Fletcher, I, 416, 424; II, 83, 93
Webster, Professor, I, 421
Webster, Sidney, II, 133, 197, 208, 387
Welles, Gideon, II, 287
Wells, G. D., II, 217
West, I, 245
West, G. R., I, 416, 450
West Indies, I, 149, 176
Wetmore, W. S., I, 405
Whampoa, I, 430
Whig, term, I, 157
Whig Party, I, 134, 142; character, I, 175; Cushing's abandonment of, II, 13; duties to, 291, 292, 293; enthusiasm, I, 277; financial views, I, 235; formation, I, 157; internal divisions, I, 307; Manifesto, I, 324; in Massachusetts, I, 199, 203, 205; II, 38, 68, 72; policy in 1837–41, I, 226; rise to power, I, 224; schism I, 329; Tyler and, I, 350
Whigs, Conscience, II, 29, 34, 36, 47
White, Ellen E., II, 292
White, John, I, 296, 330
White House plate and furniture, I, 271
White Mountains, I, 37
White race, II, 230, 232
Whitney, J. S., II, 244
Whittier, J. G., I, vii, 12, 131; on Abolitionism, I, 356; on the Abolitionists and on Clay, I, 250; letter to Cushing, May 7, 1833, I, 133; letter to Johnson on election of Cushing, I, 159; letters on slavery, in 1834, I, 154, 155, 156; letters on petitions, in 1836, I, 204, 205, 207; letters on slavery and the right of petition, Mar. 13 and April 4, 1837, I, 212, 213; on Massachusetts resolutions in 1838, I, 241, 242; poem *Massachusetts*, I, 240–241; opinion of Cushing, I, 251; opportunism, I, 204; sketch, I, 128; strategy, I, 129, 251, 254; support of Cushing in 1834, I, 150, 155; on the Texas question, I, 237; on Tyler and the Whigs, etc., I, 309
Wilde, Anne S., I, 220
Wilde, Caroline E., I, 58
Wilde, G. C., I, 58
Wilde, Judge S. S., I, 58, 85, 114, 122; II, 108; on the Abolitionists, I, 243; on the Congressional contest of 1830–32, I, 122, 124, 127, 128; family, I, 220; reaction to Cushing's speeches on the slavery question, I, 188; on Tyler and his bank vetoes I, 308
Wilkes, Captain, II, 282
Willard, Sidney, I, 26
William IV, I, 112
Williamsburg, Va., I, 11
Wilson, Henry, II, 98, 103, 228
Winthrop, F. G., I, 30
Winthrop, R. C., I, 201, 382; II, 97, 398
Wirt, William, I, 134, 138
Wise, H. A., I, 187, 191, 240, 336, 386, 388; gag-resolution, I, 268; Pierce's nomination, I, 121; sketch, I, 303
Women, II, 419; rights, I, 274
Wood, Fernando, II, 284, 377
Woodbury, C. W., I, 367
Woodbury, Levi, II, 112
Woods, Alva, I, 29, 30
Wool, Gen. J. H., II, 51
Worcester, Mass., II, 64, 94, 100
Wright, I. H., II, 51, 78
Wyandotte Constitution, II, 157

Yancey, W. L., II, 245, 261
Yazoo City, II, 185

DATE DUE

JUL 14 '58

DOMINICAN COLLEGE LIBRARY
3 3645 00017853 6

21157

E 415.9 .C98 F9 v.2 1157

Fuess, Claude Moore, 1885-1963.

The life of Caleb Cushing

San Rafael, California